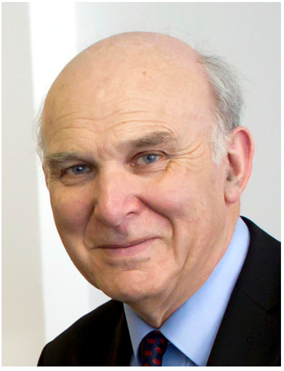
Department for Business Innovation & Skills

TRANSPARENCY & TRUST: ENHANCING THE TRANSPARENCY OF UK COMPANY OWNERSHIP AND INCREASING TRUST IN UK BUSINESS

Government response

APRIL 2014

Foreword



When I launched the Transparency and Trust discussion paper in July 2013, I explained why I think trust matters.

Trust is essential to every commercial transaction. We neglect its fragility at our peril - the creation, restoration, and safeguarding of trust is crucial for supporting economic growth in the UK.

The UK is already an outstanding place to start and run a business. We have globally recognised high standards of corporate behaviour. But there is more we can and should do to ensure we maintain our position and increase trust in the UK business environment.

Transparency and accountability are both essential for trust. We need business, investors and society to have the confidence that comes from accessing the information they need to make the best choices and complete transactions. We also know a lack of transparency with respect to those who really own and control companies can allow tax evasion, money laundering and terrorist financing to flourish.

We need business, investors and society to have trust in a system which holds accountable the minority who transgress, protecting the interests and reputation of the majority who do not. A lack of accountability – even a perception of a lack of accountability – can undermine faith in the legal framework which should protect the innocent majority when things go wrong.

Many in business tell me that transparency and accountability give confidence and help create an environment for growth. Yet at the same time the steps the Government takes to support the business environment must be seen to be effective and the requirements on business proportionate and reasonable. I am pleased that as we move to deliver the benefits of transparency and accountability we are also able to reduce unnecessary red tape by removing, for instance, duplicate requirements on companies. These reforms are set out in the complementary Company Filing Requirements consultation response document.

As a result of the UK's Presidency of the G8 in 2013 and the continuing progress at the G20, in Europe and in the Financial Action Task Force, corporate transparency is now high on the international agenda. I am proud of the changes our global leadership is bringing, and proud of our history of high standards. I believe the reforms we set out here build on that fine tradition, and will support a healthy and prosperous future for UK business.

VINCE CABLE

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Executive summary

1. Business success and economic growth depend in part on investors, employees, consumers and the wider public having confidence in business. When companies do business with each other, trust is a key part of their transactions.

2. The UK has high standards of business behaviour and corporate governance. And the overwhelming majority of UK companies contribute productively to the UK economy, abide by the law and make a valuable contribution to society. But there are exceptions.

3. Some of the features of the company structure which make it good for business also make it attractive to criminals. Companies can be misused to facilitate a range of criminal activities - from money laundering to tax evasion, corruption to terrorist financing. Sometimes those individuals running companies will not conduct themselves in accordance with the high standards we expect in the UK, posing a risk to other companies and consumers alike.

4. By tackling these exceptions, we can help build confidence and trust to benefit society and the business community.

5. **Transparency** is an essential element of good corporate governance – it gives investors and others a means to hold companies to account. **Accountability** creates a level playing field and an environment in which investors and honest entrepreneurs are prepared to undertake the activity we need to promote growth and employment.

6. A lack of transparency and of accountability with respect to those controlling a company erodes trust and damages the business environment. Ultimately this can hold back economic growth.

7. Recognising the importance of these issues, the UK has put corporate transparency on the international agenda. At the Lough Erne G8 Summit in June 2013, the Prime Minister led our G8 partners in agreeing to a number of core Principles. These are fundamental to the transparency of ownership and control of companies.

8. The Department for Business, Innovation and Skills (BIS) subsequently published the Transparency and Trust discussion paper (July 2013). In it we sought views on how to improve corporate transparency and accountability in the UK. This included how best to proceed with the corporate transparency proposals in the UK G8 Action Plan, and a range of related measures to improve confidence in the UK's regime for tackling company directors who have engaged in misconduct.

9. We also published the Company Filing Requirements consultation in October 2013. This proposed deregulatory reforms based on business suggestions from the Red Tape Challenge process. These reforms are closely related to those covered in this document, and the response to that consultation should be considered in parallel.

10. The views we heard in response to the Transparency and Trust discussion paper showed a consensus in favour of improving the UK's current regime. Whilst many proposals were supported, some issues were polarising or resulted in counter-arguments or alternative suggestions. The proposals we set out here are the product

of this process and the expert input we received, and reflect the careful calibration of the arguments put forward. There are areas where our thinking continues to develop. We welcome your continued input and engagement, particularly on the issues indicated.

A central registry of company beneficial ownership information

11. The UK's G8 Action Plan set out our commitment to implement a central registry of company beneficial ownership information, to make it easier to identify and tackle the misuse of companies. In the discussion paper, we sought views on the key questions around implementation, including that of public access. Having carefully considered the views received, the Prime Minister and Secretary of State for Business, Innovation and Skills announced in October 2013 that the central registry of company beneficial ownership information would be publicly accessible. This was on the basis that good corporate behaviour and tackling company misuse would be best served by greater transparency. This document sets out our intended approach across the wider range of implementation issues.

12. The existing definition of beneficial ownership, as applied in the anti-money laundering context, will be used as the basis for our statutory definition of 'beneficial ownership' in the context of these new requirements. This means that information on individuals who ultimately own or control more than 25% of a company's shares or voting rights, or who otherwise exercise control over the company or its management, will need to be obtained and held by the company and provided to the central registry. Where a qualifying beneficial interest in a company is held through a trust arrangement, the trustee(s) or any other natural person(s) exercising effective control over the activities of the trust will be required to be disclosed as the beneficial owner of the company.

13. UK bodies corporate that currently register information on their members at Companies House will be required to obtain and hold beneficial ownership information and provide it to Companies House. This will include Limited Liability Partnerships. However, in order to reduce burdens on business we intend to exempt companies who comply with relevant disclosure rules under the Financial Conduct Authority's Disclosure and Transparency Rules, or who have securities listed on a regulated market subject to equivalent disclosure requirements.

14. We intend to place an obligation on both companies and individuals to identify and obtain information on beneficial ownership. Companies will be required to identify their significant beneficial owners - in other words, the beneficial owner of blocks of shares or voting rights which would give the holder an interest in more than 25% of the company. In addition, where the company knows or has reasonable cause to believe that there is any other beneficial owner, they shall also be required to obtain the relevant information on that individual. Public companies already have statutory tools which will help them to obtain this information and we intend to replicate the necessary provisions in respect of private companies also.

15. In parallel, we will require individuals with a qualifying beneficial interest in the company to disclose this to the company, as significant investors in listed companies are already required to do.

16. Companies will be required to maintain a register of beneficial owners. This will contain information on the beneficial owners' full name, date of birth, nationality, country or state of usual residence, residential address, service address, date on which they acquired the beneficial interest in the company and details of that beneficial interest and how it is held. This register will be kept available for public inspection, with the exception of residential addresses.

17. Companies will be required to update the information held in their register of beneficial owners if they knew or might reasonably be expected to have known that a change to their beneficial ownership had occurred. Beneficial owners will be required to inform the company of any changes to the information recorded in the register of beneficial owners.

18. All of the information held by the company will be provided by the company to Companies House. It will be accessible publicly at Companies House with the exception of residential addresses and full dates of birth. This is consistent with the position in respect of company directors' residential addresses, and the outcome of the Company Filing Requirements consultation to suppress the 'day' of the date of the birth on the public register to assuage fraud and data privacy concerns. The month and year of birth will remain on the public record. We also intend to allow applications to the Registrar of companies to protect beneficial owners' full information from public disclosure in exceptional circumstances. Specified UK and overseas enforcement authorities will be able to access protected information held at Companies House.

19. Companies will be required to provide an initial statement of beneficial ownership on incorporation. They will not be registered at Companies House unless this information is provided. Companies will then be required to confirm that the information held at Companies House is correct at least once every 12 months, detailing all changes that have occurred in-year. We want however to ensure companies can update this information as it changes should they wish to do so, in the interests of maximum transparency. That is why complementary proposals in the Company Filing Requirements package of reform will enable companies to update the information held at Companies House more frequently. In addition, private companies will be able to hold and update their register of beneficial ownership at Companies House directly should they wish to do so[1]. Should they choose to exercise this option, they would need to update the information held at Companies House as they become aware of changes (in the same way that they would otherwise be required to update their own beneficial ownership register).

20. We intend to extend or replicate existing company law criminal offences to tackle situations where companies or individuals break the rules.

21. The introduction of a central registry of company beneficial ownership information is a significant and complex reform, requiring both primary and secondary legislation. It will be important that we provide sufficient flexibility in primary legislation to allow us to keep the policy under review in the light of experience and changing circumstances, including for example, further thinking on the frequency with which beneficial ownership information is updated at Companies House and the information that companies and individuals are required to provide. That is why we intend to

[1] See Government response to the Company Filing Requirements consultation for further information.

place a statutory duty on the Secretary of State to publish a review of the efficacy and proportionality of the registry within three years of implementation. This should include consultation and would provide an opportunity to consider the need, for example, to increase the frequency with which information is updated at Companies House.

Bearer shares and the opacity of company ownership

22. Bearer shares permit a level of opacity incompatible with our ambitions for corporate transparency. We will move to prohibit the creation of new bearer shares, and a set period of time will be provided for existing bearer shareholders to surrender their shares for conversion to registered shares. After the period set for surrender, companies with bearer shares remaining will be required to apply to court for an order cancelling those shares.

Opaque corporate control through corporate directors

23. Where a company uses a corporate director – a director that is another company (or legal person) – it can result in a lack of transparency and accountability with respect to the individuals influencing the company. Yet we have been persuaded by arguments that in some low risk areas corporate directors can perform a beneficial and legitimate business function. For that reason, we will move to prohibit the use of one company as the director of another company, but with specific exemptions where the use of corporate directors is of higher value and lower risk.

Opaque corporate control through irresponsible 'front' directors

24. There is potential for a lack of transparency and accountability when the appointed director acts irresponsibly as a front for another person, neglecting their duties while obscuring those who really exercise control. Yet we now agree with those respondents who expressed concerns that a register of "nominee" directors would be a disproportionate and ineffective means of tackling this.

25. We will improve the information available with respect to directors' general statutory duties, to increase awareness of the potential for breaching them by acting as a front. We will also legislate, as soon as Parliamentary time allows, to underpin new and specific means of contacting individual directors to ensure they have understood their duties in discharging their role.

26. We will make clear that the court is required to take account of breaches of directors' duties when considering the disqualification of a director. We will also consider whether we should increase the accountability of individuals controlling a single director (or several directors) by bringing them into scope of legal liability, and consider the potential application of the directors' general statutory duties to those who control directors.

Updating the directors' disqualification regime

27. The UK has a longstanding and respected civil system which protects business and society from unfit directors and enhances wider confidence in the UK's business environment. But it is in need of updating, to ensure that confidence remains robust.

We now propose to take a series of measures to ensure the system is efficient and effective.

28. We will replace the current description of the matters determining unfitness of a director (in the Company Directors Disqualification Act; CDDA 1986) with a new, broader and more generic provision. This will cover consideration of the materiality of a director's conduct, including breaches of law and the nature and extent of harm caused. In future, the court or the Insolvency Service (on behalf of the Secretary of State) will be required to take these into account in determining whether an individual should be disqualified and, if so, for how long.

29. We will also enable courts to take any overseas misconduct into account when deciding whether to disqualify a director in the UK. We will also move to provide the Secretary of State with the power to seek the disqualification of an individual from acting as a director in the UK when convicted of a relevant criminal offence overseas. Furthermore, we have commissioned research into international regimes to help determine the merits of making regulations to prevent directors restricted overseas from acting as directors in the UK.

30. We will better integrate sectoral regulation and the director disqualification regime. We are committed to further improving co-operation between sectoral regulators, particularly in key sectors, and the Insolvency Service. We will remove legislative barriers to the types of investigative material, including from sectoral regulators, that can be used in disqualification of a director, and allow the Insolvency Service to share investigatory information with other regulatory or enforcement bodies.

31. We plan to increase the time limit for instituting disqualification proceedings under section 6 of the CDDA from 2 to 3 years of the earliest insolvency event. To ensure actions which provide redress are indeed brought forward and that they work effectively in the interests of the creditor, we will allow causes of action that arise on an insolvency to be sold or assigned to another party to pursue. We will move to give the court the power to make a compensation order against a director who has been disqualified where creditors have suffered identifiable losses from their misconduct.

Next steps

32. Many of the changes we have described will require primary legislation, and it is our intention to legislate where necessary as soon as Parliamentary time allows. At that time we will also give careful consideration to communication and transitional arrangements, particularly for existing companies.

33. While bringing wider benefits to the international community and society in the UK, it is UK companies that stand to gain from this package of reforms. Ultimately, improved transparency and accountability improve trust. And trust in business is good for business.

Overview of proposals

A central registry of company beneficial ownership information

- We intend to use the existing definition of beneficial ownership, as applied in the anti-money laundering context, as the basis for our statutory definition of 'beneficial ownership'. This means that information on individuals who ultimately own or control more than 25% of a company's shares or voting rights, or who otherwise exercise control over a company or its management, will need to be obtained and held by the company and provided to the central registry.
- We will continue to develop and refine this definition, including what is meant by 'control' in this context, to ensure maximum clarity and ease of application.
- We intend that where a qualifying beneficial interest in a company is held through a trust, the trustee(s) or any individual(s) who control the activities of the trust should be recorded as the beneficial owner of the company. In most cases this will require only the trustee(s) to be registered. In some it might be another individual, such as the beneficiary, settlor or protector of the trust.
- We intend to require UK bodies corporate that currently register information on their members at Companies House to obtain and hold beneficial ownership information and provide it to the central registry. This will include companies limited by guarantee and Limited Liability Partnerships (LLPs).
- We will continue to work through this principle to ensure that there are no loopholes or unintended consequences.
- We intend to exempt Disclosure and Transparency Rules (DTR) issuers, and companies who have securities listed on a regulated market subject to equivalent disclosure requirements, from the requirement to obtain and hold beneficial ownership information, and provide it to a central registry.
- We intend to adapt relevant provisions of Part 22 of the Companies Act 2006 and apply them to all companies to help them identify beneficial ownership. We will require companies to identify their beneficial ownership where that beneficial interest is held through a significant shareholding; or is otherwise known to the company. We will also place an obligation on beneficial owners to disclose their interest in the company to the company.
- We will continue to refine this model to ensure that it is as straightforward as possible for companies and individuals to understand and apply, whilst also minimises opportunities for companies and individuals to evade the requirements.
- We intend to require companies to maintain a register of beneficial owners, containing information on the beneficial owners':
    - full name;
    - date of birth;
    - nationality;
    - country or state of usual residence;
    - residential address;
    - a service address; and
    - date on which they acquired the beneficial interest in the company and details of that interest and how it is held.

- This register will be kept available for public inspection at the company's registered office or specified location, with the exception of residential addresses[2]. All of the information held will be required to be provided to Companies House.
- Where a company (A) is owned by a company (B), where B is exempted from the beneficial ownership requirements or is a UK company and already maintains a register of beneficial ownership information, we intend to provide that A need only provide relevant information about B, rather than about B's beneficial ownership.
- We will require companies to update the information held in their register of beneficial owners if they knew or might reasonably be expected to have known that a change to their beneficial ownership had occurred. We will also require beneficial owners to inform the company of any changes to the information recorded in the register of beneficial owners.
- We will require companies to provide an initial statement of beneficial ownership on incorporation. We will also require companies to update their beneficial ownership information at least once in a 12 month period. We intend to take this forward in the context of the new 'check and confirm' system, requiring all changes to beneficial ownership that have occurred in-year to be listed.
- We want all companies to be as transparent as possible and keep their information as up to date as possible. That is why companies will be able to update the information held at Companies House more frequently should they wish to do so. In addition, private companies will have the option to maintain and update their beneficial ownership register at Companies House directly – meaning that changes would be updated at Companies House as the company becomes aware of them.
- The public register at Companies House will contain information on the beneficial owners':
    - full name;
    - month and year of birth[3];
    - nationality;
    - country or state of usual residence;
    - a service address; and
    - date on which they acquired the beneficial interest in the company and details of that interest and how it is held.
- Companies House will also hold a residential address and a full date of birth for the beneficial owner. This information will however only be accessible to specified authorities.
- We are considering which UK and overseas authorities should have access to protected information held at Companies House, and how to ensure that this is as easy and cheap as possible whilst also ensuring that data is appropriately stored and held. And we are considering how to ensure that access to company beneficial ownership information on the public register is also as easy and cheap as possible.
- We intend to allow applications to the Registrar of companies to protect beneficial ownership information from public disclosure in exceptional circumstances. The Registrar will review the grounds for the application, seeking additional information as required, and grant or refuse the application accordingly. Where the application is granted, we are minded to require that fact to be stated on the public record and that

[2] As outlined in the separate Response to the Company Filing Requirements consultation private companies will have the ability to opt out of holding their register provided all the information is available on the public register.
[3] Unless the company has opted not to maintain its own register of beneficial owners, in which case the date of birth will be available on the public record at Companies House (see the Company Filing Requirements response document for more information).

the company should also protect this information on its own register. Specified authorities will remain able to access this protected information.
- We intend to extend or replicate existing company law criminal offences to tackle situations where companies or individuals break the rules.
- We do not propose to extend the Secretary of State's investigative powers under the Companies Act 1985 to law enforcement and tax authorities.
- We intend to place a statutory duty on the Secretary of State to publish a review of the efficacy and proportionality of the registry within three years of implementation. This should include consultation and would provide an opportunity to consider the need for use of, for example, the power to increase the frequency with which beneficial ownership information is updated at Companies House.

Bearer shares and the opacity of company ownership

- We intend to prohibit the creation of new bearer shares and we will provide a set period of time for existing bearer shareholders to surrender their bearer share warrants for conversion to the registered shares specified in the warrant.
- After the set period for surrender companies with bearer shares remaining would be required to make applications to court for the cancellation of those shares.
- Information about the detail of the policy change will be disseminated through Government channels of communication and particularly by Companies House.

Opaque corporate control through corporate directors

- We intend to prohibit the use of one company as the director of another company - corporate directors - with limited and specific exemptions where the use of corporate directors is of higher value and lower risk.

Opaque corporate control through irresponsible 'front' directors

- We will improve the general standard of information available with respect to directors' general statutory duties, to increase awareness of the potential for breaching them by acting as an irresponsible front.
- We will legislate as necessary to underpin new and specific means of contacting individual directors to ensure they have understood their duties.
- We will make explicit that the court is required to take account of breaches of any legislation, which will include breach of directors' duties, when considering the disqualification of a director.
- We are considering increasing the reach of legal accountability to cover those who control a single director, and considering extending the directors' general statutory duties to those who control directors.

Updating the directors' disqualification regime

- When Parliamentary time allows we will replace Schedule 1 of the CDDA (setting out the matters determining unfitness) with a new, broader and more generic, provision setting out the factors which will be considered and providing for consideration of the materiality of a director's conduct, culpability and track record, and the impact of their behaviour - all of which the court or the Insolvency Service (on behalf of the Secretary of State) will have to take into account in determining whether an individual should be disqualified and, if so, for how long.
- When Parliamentary time allows we will amend the law to:

  - require courts to take any overseas misconduct into account when deciding whether or not to disqualify a director in the UK; and
  - provide the Secretary of State with the power to disqualify an individual from acting as a director in the UK when convicted of a criminal offence in connection with the promotion, formation or management of a company overseas.
- We have also commissioned research into director disqualification and sanction regimes in certain other jurisdictions to inform the decision as to whether to make regulations under Part 40 of the Companies Act, to prevent directors restricted overseas from acting as directors in the UK.
- We will require the courts to consider breaches of sectoral regulation in disqualifying a company director.
- We will remove the legislative barriers to the types of investigative material that can be provided by sectoral regulators or others for use by the Insolvency Service to pursue the disqualification of a director.
- We will enhance the ability for the Insolvency Service to share investigative information with other regulatory or enforcement bodies.
- We commit to effective working between sectoral regulators, including those in key sectors such as the FCA and PRA, and the Insolvency Service. We will build on current best practice to develop a programme of ongoing collaboration and co-operation to ensure sector specific regulatory enforcement and economy-wide company law enforcement are fully integrated.
- We will not amend the directors' general statutory duties to introduce a primary duty for bank directors to promote financial stability over the interests of their shareholders.
- When Parliamentary time allows we will allow causes of action that arise on an insolvency and which may only be pursued by an insolvency office-holder to be sold or assigned to another party to pursue, to increase the chances of action being taken against miscreant directors for the benefit of creditors.
- When Parliamentary time allows we will give the Secretary of State the power to apply to the court for a compensation order against a director who has been disqualified (and to empower the Insolvency Service to accept a compensation undertaking offered by such a director) where creditors have suffered identifiable losses from their misconduct.
- When Parliamentary time allows we will increase the time limit for instituting disqualification proceedings under section 6 of the CDDA from 2 to 3 years of the earliest insolvency event.

Introduction

1. The central principle of the Transparency and Trust discussion paper (July 2013) was that business success - and therefore economic growth - depends in part on investors, employees, consumers and the wider public having confidence in business. In that paper, we sought views on a series of measures to increase the transparency of the ownership and control of UK companies and the accountability of the people who exercise that control. It prompted a valuable debate and we received a large number of responses. This document sets out the actions Government will to take to improve trust in the UK company structure, and the UK business environment.

2. We know that the overwhelming majority of UK companies contribute productively to the UK economy, abide by the law and make a valuable contribution to society. Companies make up over 60% of private enterprises, over 80% of private enterprise employment and 95% of turnover[4]. Their key features, including separate legal personality, make them a crucial tool in facilitating economic transactions.

3. But there are exceptions. Some of the features of the company structure which make it good for business also make it attractive to criminals, and can lead to a sense of a lack of accountability with respect to the people behind the company.

4. Companies can be misused to facilitate a range of criminal activities - from money laundering to tax evasion, corruption to terrorist financing. These have consequences at home and abroad, particularly for low income countries. It is often noted that these countries lose billions of dollars per year through illicit financial flows. Lack of transparency over the ownership and control of corporate structures can facilitate these types of **illicit activity**. A lack of transparency and of accountability for those controlling a company also suggests a **deficiency in corporate governance**, which erodes trust and damages the business environment. Both can ultimately hold back economic growth. This can be damaging for business, and for wider society.

5. The UK has led the corporate transparency agenda internationally, first and foremost through its Presidency of the G8 in 2013. For 2014 and beyond, the UK remains committed to leading the world by acting in the UK's own best interests while driving change on a wider stage.

6. At the Lough Erne G8 Summit in June 2013, G8 leaders agreed a number of core Principles[5] that are fundamental to the transparency of ownership and control of companies. The Financial Action Task Force (FATF)[6] standards on combating money laundering and terrorist financing underpin these Principles. A key FATF recommendation is: "adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities […]." This recommendation is reflected in EU

[4] IDBR, March 2013
[5] 'Common principles on misuse of companies and legal arrangements', June 2013: https://www.gov.uk/government/publications/common-principles-on-misuse-of-companies-and-legal-arrangements
[6] The Financial Action Task Force (FATF) is the international body that sets the standards on combating money laundering and terrorist financing.

proposals for a Fourth Money Laundering Directive, currently being negotiated by Member States and the European Parliament.

7. Each G8 country has published an Action Plan setting out the concrete steps they would take to implement these Principles in their jurisdiction. Within its Action Plan, the UK committed to implement a central registry of company beneficial ownership information and to a wider examination of corporate transparency, including the use of bearer shares and the opacity afforded by certain arrangements involving company directors.

8. Following the G8 commitment, the Government published the Transparency and Trust discussion paper in July 2013. The paper sought the views of the full range of interested parties on how to improve corporate transparency and accountability in the UK. This included how best to proceed with the corporate transparency proposals in the UK G8 Action Plan, and take forward a range of related measures to improve confidence in the UK's regime for tackling company directors who have engaged in misconduct.

9. The full range of questions we posed covered these issues:

   - introducing a central registry of UK company beneficial ownership information, including how we define 'beneficial owner'; the types of corporate entity required to provide information to the registry; how beneficial ownership information is obtained; what information is provided to the registry and how often it is updated; and whether that information should be publicly accessible;
   - proposing that the creation of new bearer shares should be prohibited; and that existing bearer shares should be converted to ordinary registered shares;
   - enhancing transparency around the use of "nominee" directors; and whether companies should be prohibited from appointing other companies as directors, i.e. whether to ban corporate directors;
   - amending directors' statutory duties in key sectors such as banking and whether to allow sectoral regulators to disqualify directors;
   - considering what additional factors the court might take into account in director disqualification proceedings, such as the nature and number of previous company failures a director has been involved in;
   - helping creditors receive compensation when they have suffered from a director's fraudulent or reckless behaviour;
   - extending the time limit for bringing disqualification proceedings in insolvent company cases from two to five years;
   - offering directors who have been disqualified, education or training to equip them with the skills they need to go on to run a successful company; and
   - considering whether individuals subject to foreign restrictions should be prevented from being a director of a UK company, and whether directors convicted of a criminal offence in relation to the management of an overseas company should be able to be disqualified in the UK.

10. In October 2013, having considered the responses received, the Prime Minister and Secretary of State for Business, Innovation and Skills (BIS) announced the intention to introduce a **publicly accessible** central registry of company beneficial ownership

information[7], on the basis that good corporate behaviour and tackling company misuse would be best served by greater transparency.

11. Also in October 2013, we published a consultation on related reforms to company filing requirements[8]. This covered a range of proposals to streamline the information that companies provide to Companies House across the piece (not just in relation to company ownership and control) and to improve the quality of the information on the public register at Companies House. Many of the deregulatory proposals in that package were derived from business suggestions, as part of the Red Tape Challenge process[9].

12. Taken together, the Transparency and Trust and Company Filing Requirements reforms will rationalise requirements for business - allowing companies to provide the most useful set of information in the most sensible way, with new requirements reducing duplication or complexity.

13. Changes will largely be implemented in parallel where possible. A large number of the proposals will affect the information filed with the Registrar of Companies (Companies House). Some of the proposals may mean several changes to particular services. Companies House will need to make changes to its processes, systems, forms and guidance and these will be communicated to its customers in advance.

14. This document sets out the way we plan to take these proposals forward in the light of your responses to the Transparency and Trust discussion paper. It outlines how policy proposals have developed and been adapted since July in light of your feedback. There are areas where our thinking on implementation of the reforms continues to develop, and we welcome your continued input and engagement on these issues.

15. Published alongside this document are Impact Assessments covering aspects of the reforms[10]. These provide an analysis of the impact on business and the full range of costs and benefits based on the policy outlined in the July discussion paper. Where necessary, Final Stage Impact Assessments reflecting the policy proposals as set out and developed from this document will be published in due course. Where Impact Assessments are not provided in parallel, they will be available in full in due course, and before the introduction of any necessary legislative measures.

16. While bringing wider benefits to the international community and society in the UK, it is UK companies that also stand to gain from these reforms. Ultimately, improved transparency and accountability improve trust, and trust in business is good for business.

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[7] Press release, October 2013: Public register to boost company transparency - https://www.gov.uk/government/news/public-register-to-boost-company-transparency

[8] BIS consultation, October 2013: Company Filing Requirements - https://www.gov.uk/government/consultations/company-filing-requirements

[9] The response to the Company Filing Requirements consultation document is being published separately. The intention remains to implement the package, following consultation on the basis of the two separate documents, as a single package of reform.

[10] Impact Assessments covering beneficial ownership, bearer shares, corporate directors and updates to the disqualification regime will be published alongside this document. No Impact Assessment will be published covering ‘front’ directors.

Methodology

17. The Secretary of State for Business, Innovation and Skills announced the publication of the Transparency and Trust discussion paper at a conference hosted by Reform entitled "Responsible Capitalism" in London on 15 July 2013. We invited a range of businesses, organisations and others to formally respond to the discussion paper, and ultimately received responses from an even wider range. At the end of the response period on 16 September 2013, we had received over 300 responses.

Type of organisation	Number of responses
Non regulated[11] business – individuals and companies	9
Non regulated business representative body	21
Regulated business – individuals and companies	54
Regulated business representative body	5
Non-governmental organisation/charity	21
Private individual	215
Others	5
Total	325

18. Between July and September 2013 we invited businesses, representative bodies and non-governmental organisations (NGOs) to a series of focus groups and roundtable discussions to gain their views on the proposals. Throughout this period, we also engaged through smaller meetings and by telephone and email to gain understanding of a wide range of views on the proposals.

19. We commissioned a survey involving short interviews with 574 companies to inform analysis of the costs and benefits of the proposals, and provide evidence now reflected in the Impact Assessments. We also conducted an online survey to establish the costs and benefits of the policy proposals for companies. Together these gave some insight into how the proposals were received. (Full details of analysis of the costs and benefits are outlined in the Impact Assessments published alongside this document[12].)

[11] We define 'regulated business' as businesses that are regulated under the Money Laundering Regulations 2007. This includes banks, lawyers and accountants.
[12] Impact Assessments covering beneficial ownership, bearer shares, corporate directors and updates to the disqualification regime will be published alongside this document. No Impact Assessment will be published covering 'front' directors.

20. Since the period for receiving views formally closed, we have continued to engage with interested parties and to take their views into consideration.

21. This document summarises the views we received and the Government's response. Where we refer to proportions of respondents in this document, it is with reference to the total number who responded to each question (not the total who responded to any part of the discussion paper; many respondents answered only the portion of the questions of interest to them).

The Way Forward

1. A central registry of company beneficial ownership information

22. As set out in the discussion paper, UK company law already requires certain information on company directors and the registered legal owners of company shares (often referred to as 'shareholders') to be made publicly available. However, this will not in all cases highlight who *really* owns and controls the company – its 'beneficial owners'.

23. There are circumstances in which this beneficial ownership information is obtained, for example, by banks, lawyers and accountants ('regulated entities[13]') in the course of anti-money laundering (AML) due diligence checks. However, there is currently no requirement for all companies to obtain and hold this beneficial ownership information as a matter of course.

24. This provides scope for opacity of company ownership and control. This opacity can facilitate the misuse of the company for illicit activity - and hinder law enforcement's ability to identify and sanction the individuals really responsible. The misuse of companies is a serious global issue, and investigations often involve chains of corporate entities spanning multiple jurisdictions. That is why all the G8 countries, during the UK's 2013 G8 Presidency, committed to take steps to enhance the transparency of company beneficial ownership[14].

25. The UK has led by example. It committed to implement a central registry of company beneficial ownership information, maintained by Companies House, and to consult on whether that information should be publicly accessible. Following careful consideration of the responses received to the Transparency and Trust discussion paper, the Prime Minister announced at the Open Government Partnership in October 2013 that the registry **would** be publicly accessible[15]. This was on the basis that tackling the misuse of companies and promoting good corporate behaviour would be best served by greater transparency.

26. Implementation of a central registry of company beneficial ownership information will interact closely with the implementation of some proposals in the Company Filing Requirements consultation. The interaction is highlighted in this document and the proposals across the two documents should be considered as one overall set of reforms. A comprehensive and complementary response to the Company Filing Requirements consultation is being published separately[16].

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[13] We define 'regulated entities' as businesses that are regulated under the Money Laundering Regulations 2007.
[14] G8 Communiqué 2013, June 2013: *"Companies should know who owns and controls them and their beneficial ownership and basic information should be adequate, accurate, and current. As such, companies should be required to obtain and hold their beneficial ownership and basic information, and ensure documentation of this information is accurate."* - https://www.gov.uk/government/publications/2013-lough-erne-g8-leaders-communique
[15] PM Speech at Open Government Partnership, October 2013: https://www.gov.uk/government/speeches/pm-speech-at-open-government-partnership-2013
[16] That document will also set out views in respect of questions 13, 14, 18 and 22 of this discussion paper.

27. That consultation also sought views on whether Companies House has achieved the correct balance between upfront validation and verification. It noted the importance both of maintaining the integrity of the register and maintaining the UK's quick, simple and inexpensive registration regime. Our response to the Company Filing Requirements consultation deals with views received on this point and outlines Government's proposals.

28. In addition to the UK's domestic proposals, there are ongoing EU negotiations on beneficial ownership proposals that would apply to all EU Member States, including the UK[17]. We believe that the UK has a real opportunity to lead from the front on transparency of company beneficial ownership. This is why we are encouraging our EU counterparts to support UK proposals for mandatory, publicly accessible registries of company beneficial ownership information in the Fourth Money Laundering Directive.

(1) The information to be held in the registry

This section covers the way forward in relation to the content of questions 1, 8 and 9 in the Transparency and Trust discussion paper.

The definition of beneficial ownership

29. The discussion paper proposed to apply the definition of 'beneficial ownership' used by the FATF, as applied in the EU Third Money Laundering Directive and the Money Laundering Regulations 2007. These provide that the beneficial owner(s) of a company is any individual who has an interest in more than 25% of the shares or voting rights of the company, or who otherwise exercises control over the management of the company. This would include where a person's interest is held jointly with another individual or as a result of various shareholdings in the company, such that they can control more than 25% of the company's shares or voting rights.

Views received

30. All NGO respondents, with the exception of Transparency International, felt that the threshold for a qualifying beneficial interest should be removed entirely or, if not, lowered to 10% (in line with US tax disclosure requirements). They raised concerns that a threshold would provide scope for people to evade the requirements: "With a 25% threshold, it will be possible for a limited number of people to collude to obfuscate the ownership of a company." (Christian Aid)

31. Many business respondents (including Aviva, the Law Society and the Institute of Directors (IoD)) had practical questions as to how the definition would be applied and enforced in practice, and highlighted the need for clarity in the legislation. Some put forward alternate definitions or means to calculate 'beneficial interest'.

[17] See *EU Proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing*, February 2013: http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm

32. However, the majority (including the GC100, CBI, British Bankers' Association (BBA), Institute of Chartered Accountants in England and Wales (ICAEW) and the Institute of Chartered Secretaries and Administrators (ICSA)) were supportive of the proposed definition, with arguments raised against a lower threshold: "[it] would create a larger compliance burden for businesses." (CBI)

Government response

33. We have decided to retain the proposed base of the definition of beneficial ownership, including the 25% threshold.

34. One reason for this is that having a 25% interest would provide an individual with a blocking minority in certain company decision-making processes. We also think that industry should be familiar with our proposed definition because they will in many cases have been asked to provide information on this basis by their bank, lawyer or accountant under the current AML rules. This should help companies to understand and apply the new rules. Finally, we would be concerned at the cost implications for business of lowering or removing the 25% threshold. This as information on more individuals would have to be obtained and provided to the registry.

35. We strongly recognise the need for legislative clarity, particularly in terms of defining 'otherwise exercises control'. We will continue to develop this definition, looking to existing legislation and precedents where possible. We will also look to minimise opportunities for individuals and companies to 'get round' the rules by ensuring that the definition is as broad as possible. We would **welcome views** on the precise nature of the definition, including the definition of 'control' in this context.

Summary way forward

- **We intend to use the existing definition of beneficial ownership, as applied in the anti-money laundering context, as the basis for our statutory definition of 'beneficial ownership'. This means that information on individuals who ultimately own or control more than 25% of a company's shares or voting rights, or who otherwise exercise control over a company or its management, will need to be obtained and held by the company and provided to the central registry.**

- **We will continue to develop and refine this definition, including what is meant by 'control' in this context, to ensure maximum clarity and ease of application.**

Trusts

36. We have given particular consideration to the application of this definition where an interest in more than 25% of a company's shares or voting rights is held through a trust, or where an individual is otherwise able to control the management of the company through a trust.

37. The discussion paper proposed that in these cases, the trustee(s) should be disclosed as the beneficial owner(s) of the company. We asked whether and when it would be appropriate for the beneficiary of the trust to be disclosed as the beneficial owner.

Views received

38. With one exception, NGOs agreed that trustees should be disclosed as the beneficial owners of the company. They all however felt that it would also be important to disclose information on the beneficiaries, settlors, protectors and any other controllers of the trust. Christian Aid called for a complete registry of trusts to be established, as for companies.

39. Business and representative bodies agreed that information on the trustee should be obtained: "[…] the proposal to require the trustees of express trusts to be disclosed […] will only constitute an extension of the current arrangements." (Society of Trust and Estate Practitioners (STEP)). Many felt that information on beneficiaries should also be disclosed, although some were clear that this should only be where the beneficiary had effective control over the trust's activities (for example, the right to control how the trust voted the shares). A few, including Ernst & Young (EY) and PwC were against any disclosure of beneficiaries, on the grounds of the challenges this would present: "There are major practical difficulties with disclosing the beneficiaries of a trust." (PwC)

40. Several respondents highlighted the need to maintain the principle of trusts as private arrangements, and therefore questioned whether information on trusts should be made available publicly.

Government response

41. We want to make sure that where more than 25% of a company's shares or voting rights are held in a trust; or where a trust arrangement provides an individual(s) with control over the company or its management, the individuals who control the activities of the trust are recorded as the beneficial owners of the company. However, we do not want to disclose the identity of individuals who may ultimately benefit from the trust arrangement, but who do not have any control or ownership of the company itself – for example, children, vulnerable adults or individuals unaware that that they are a beneficiary (as may be the case in a will trust, for example).

42. We therefore intend to require the trustee(s) or any individual(s) who exercise effective control over the trust's activities to be disclosed on the company's register of beneficial owners. In most cases this will require only the trustee(s) to be registered. In some it might however be another individual such as the settlor, beneficiary or protector of the trust.

43. This will likely be coupled with EU proposals which would require the trustees of express trusts to hold information on the settlor, trustee, protector and beneficiaries, as well as any other individual effectively controlling the trust[18]. The UK supports mandatory requirements on trustees to hold beneficial ownership information on their trusts. Together with new automatic exchange of tax information agreements, we believe there will be more transparency and information exchange on trusts than ever

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[18] See Article 30 of the *EU Proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing*, February 2013: http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm

before. We are continuing to engage with other EU Member States, the G20, civil society and the private sector to ensure these mechanisms are as effective as possible - not just to UK efforts to tackle illicit finance, but also efforts of developing countries.

Summary way forward

- **We intend that where a qualifying beneficial interest in a company is held through a trust, the trustee(s) or any individual(s) who control the activities of the trust should be recorded as the beneficial owner of the company. In most cases this will require only the trustee(s) to be registered. In some it might be another individual, such as the beneficiary, settlor or protector of the trust.**

(2) Companies within scope of the registry

This section covers the way forward in relation to the content of questions 2 and 3 in the Transparency and Trust discussion paper.

Corporate entities required to obtain and hold beneficial ownership information, and provide it to a central registry

44. We have committed to implement a central registry of UK company beneficial ownership information. The discussion paper sought views on whether any other corporate bodies – such as Limited Liability Partnerships (LLPs) – should also be required to obtain and hold this information, and provide it to a central registry maintained by Companies House.

Views received

45. NGOs wanted at least all entities currently providing information to Companies House to provide beneficial ownership information, with some calling for requirements to go further: "Information about beneficial ownership should be collected for all legal entities that can be incorporated in the UK [and] of all overseas companies that have registered a UK establishment with Companies House." (ONE) This view was shared by some in the business community, and the majority of individuals who responded.

46. The business community was largely supportive of all entities who currently register information with Companies House being in scope. This would include LLPs. Many, including ICSA and EY, were clear that LLPs should be in scope.

47. Other respondents, including Allen & Overy and the Law Society, gave a number of reasons why LLPs should be exempt. They asked how the policy would practically be applied to LLPs, and raised concern that the policy might undermine some of the features that make LLPs attractive – for example, the current non disclosure of the economic split between members of the LLP.

Government response

48. We think that in principle, UK corporate entities that currently register information on their members at Companies House should be required to hold their beneficial

ownership information and provide it to the central registry. This will include companies limited by guarantee and LLPs. There is evidence to suggest that LLPs can be used to facilitate illicit activity. We want to ensure that the LLP form does not become an attractive alternative to a company to facilitate crime.

49. We are continuing to work through this principle to ensure that there are no loopholes or unintended consequences. This is particularly important in respect of LLPs and companies that are not formed and registered under the Companies Act 2006 (CA06) but which nevertheless provide (some) information to Companies House. We are also carefully considering the position in relation to Scottish Limited Partnerships (LPs) and whether they should be required to provide information to the central registry. This is because, unlike English and Wales LPs and Northern Irish LPs, Scottish LPs have separate legal personality.

50. We therefore **welcome views** on this proposal, particularly in terms of how the definition and other beneficial ownership requirements might apply to corporate entities that are not Companies Act companies.

51. BIS does not intend to apply beneficial ownership requirements to corporate or legal entities which do not currently provide information to Companies House. This is because there is no existing relationship between such entities and Companies House, some of which are regulated and/or registered by other Government agencies. For example, building societies and credit unions are regulated by the Financial Conduct Authority (FCA) and so do not provide information to Companies House. Requirements for such entities (i.e. those having no relationship with Companies House) to comply with beneficial ownership requirements will depend upon the conclusion of the Fourth EU Money Laundering Directive, negotiations for which are ongoing[19].

52. Finally, as indicated in the discussion paper, we do not intend to extend these requirements to non-UK companies. This is due to restrictions imposed by EU company law directives, and to the legal risk and challenge of applying UK law extra-territorially (i.e. to overseas companies operating in the UK). The UK will however continue to proactively lobby other jurisdictions, notably in the context of the G8, G20, EU and in FATF, to take equally ambitious action on company beneficial ownership.

Summary way forward

- **We intend to require UK bodies corporate that currently register information on their members at Companies House to obtain and hold beneficial ownership information and provide it to the central registry. This will include companies limited by guarantee and LLPs.**

- **We will continue to work through this principle to ensure that there are no loopholes or unintended consequences.**

[19] See Article 29 of the *EU Proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing*, February 2013: http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm

Exemptions

53. The discussion paper also asked whether certain companies, such as those with securities listed on a regulated market, should be exempt from the requirement to obtain and hold beneficial ownership information, and provide it to a central registry. We noted that these companies already comply with stringent ownership disclosure rules (the FCA Disclosure and Transparency Rules (DTRs)).

Views received

54. With one exception, NGOs were opposed to any companies being exempt from beneficial ownership requirements. They argued that information disclosed under the DTRs does not necessarily equate to beneficial ownership information. At the very least, they felt these companies should provide the information disclosed under the DTRs to Companies House. They argued that any additional burden this would impose would be minimal. This view was shared by some in the business community, including the IoD: "As they will already have relevant information on beneficial ownership, there is little deregulatory benefit to be gained from exempting them from inclusion in the main central registry".

55. Global Witness, on the other hand, agreed with the proposal to exempt public companies listed on a regulated market. This view was shared by the majority of businesses and their representative bodies, on the basis that they already comply with market disclosure rules. Indeed, some respondents felt the exemption should go wider: "[…] this exemption should be extended to all companies that comply with the UK Listing Authority's Disclosure and Transparency Rules, since all of these companies are already publicly disclosing beneficial ownership figures." (London Stock Exchange Group)

Government response

56. On balance, we do not think that companies who comply with the ownership disclosure requirements of the DTRs, or who have securities listed on a regulated market subject to equivalent disclosure requirements, should be required to obtain and hold beneficial ownership information and provide it to Companies House. This is because they are already providing ownership information to the market; and as public, trading companies they are subject to generally higher levels of regulation and public scrutiny. We therefore judge that the risk of illicit activity is lower. This exemption would include AIM listed companies, as they are DTR compliant, subject to the outcome of ongoing EU negotiations about the scope of the Fourth Money Laundering Directive.

57. Disclosures made under the DTRs are already publicly available. However, we intend to further consider whether there are ways in which we can raise awareness of the availability of this information.

58. We **welcome views** on the proposed exemptions to the beneficial ownership requirements. Are there any risks or unintended consequences; or additional exemptions that we need to consider?

Summary way forward

- **We intend to exempt DTR issuers, and companies who have securities listed on a regulated market subject to equivalent disclosure requirements, from the requirement to obtain and hold beneficial ownership information, and provide it to a central registry.**

(3) Obtaining information on beneficial ownership

This section covers the way forward in relation to the content of questions 4 to 7 in the Transparency and Trust discussion paper.

59. The discussion paper proposed placing an obligation on the company to obtain beneficial ownership information in respect of significant shareholdings. It also sought views on placing a disclosure obligation on the beneficial owner. We also proposed to give all companies the power to identify individuals with an interest in their shares by applying the relevant provisions of Part 22 of the CA06[20].

Views received

60. The majority of respondents were in favour of beneficial owners being required to self-declare their interest to the company. However, some raised concerns around the risk of inadvertent non disclosure and how effective this would be: "Such self-reporting is onerous and only catches the compliant." (International Financial Centres Forum)

61. Industry raised concerns about obligations being placed solely on the company. These included that the company would be held liable where false information was provided by the beneficial owners, and that it would be burdensome or impractical for the company to track and update this information. Particular concerns related to overseas beneficial owners and individuals acting together to conceal their control or ownership. Some therefore felt that the individual's obligation should be instead of an obligation on the company: "The beneficial owner is the correct place for the onus of the reforms to fall." (Institute of Certified Bookkeepers)

62. Others were supportive of an obligation being placed on the company, provided that it was coupled with a parallel obligation on the beneficial owner: "We believe this is an important requirement, but only in conjunction with those on legal and beneficial owners themselves. A company must be able to rely on declarations made to it, unless there are reasonable grounds to suspect they are false, which should trigger the company to make enquiries." (John Howell & Co Ltd). Some suggested that the company should only be required to take 'reasonable steps' to identify its beneficial ownership, or that responsibility for obtaining the information should rest with the beneficial owner: "We believe that the ultimate responsibility for declaring their beneficial ownership in the company should lie with the beneficial owners themselves." (IoD)

[20] Part 22 of the Companies Act 2006 currently enables public companies to ask individuals suspected of having an interest in their shares to confirm or deny that fact.

63. NGOs on the other hand were unanimously agreed that an obligation should be placed on the company: “[…] the primary responsibility for collecting and submitting beneficial ownership information must remain with the company itself.” (Global Witness)

64. There was near unanimous support for the application of Part 22 of the CA06 to all companies as a means to facilitate beneficial ownership identification. Some concerns were however raised in terms of how effective or proportionate Part 22 would be: “Part 22 only applies to information about beneficial holdings in shares […] unclear how a company will know who to contact for disclosure of other controllers.” (Aviva)

65. Respondents also put forward a number of suggestions as to how beneficial ownership information might otherwise be obtained. This included whether an obligation might also – or alternatively – be placed on the legal owner of the company, or on a third party such as a bank, or whether companies should be required to carry out due diligence checks on their beneficial ownership (as banks, lawyers, accountants and others do currently under the AML regime).

Government response

66. We intend to adapt relevant provisions of Part 22 of the CA06 and extend them to all companies so that they have a way to obtain information on any person suspected of having an interest in their shares. As under Part 22 currently, it would be an offence for a person to fail to respond or to provide false information to the company. We will further consider what additional provision might be made to incentivise compliance.

67. We also intend to place direct obligations on both the company and the beneficial owner.

68. We will look to provide that where one member of the company (as recorded in the company’s register of members) owns more than 25% of the company’s shares or voting rights, the company must obtain information on the beneficial ownership of those shares or voting rights. In addition, where the company knows or has reasonable cause to believe that there is any other individual falling within the definition of ‘beneficial owner’ as outlined in section (1) above, they shall also be required to obtain the relevant information on that individual. If a company cannot identify its beneficial ownership, it will be required to state that fact on its register of beneficial owners.

69. Companies will not however be held liable for the provision of false beneficial ownership information to Companies House where they did not and could not have been expected to know that this was the case.

70. Individuals with a qualifying beneficial interest in a company will be obliged to inform companies of that fact. We will carefully consider the interaction between the company’s obligation and that of the individual to ensure the process is as efficient as possible.

71. We will further refine this model over the coming months. Our aim is to ensure that companies disclose any information known to them about their beneficial ownership, that they take steps to obtain beneficial ownership information where the interest is held through significant blocks of shares or voting rights, and that individuals disclose

their beneficial interest to the company. This will help ensure that the beneficial ownership information provided to Companies House is as complete and accurate as possible, and minimise the risk of companies and beneficial owners colluding to avoid the relevant information being disclosed. Strong sanctions will further support this (see below).

72. We do not intend to place any obligations on legal owners of the company who are not also beneficial owners. However, any legal owner in receipt of a notice from the company asking for information about beneficial ownership would be legally obliged to reply.

73. We **welcome views** on the proposed model for obtaining beneficial ownership information. For example, are there additional elements that would make the process more efficient, or unintended consequences or loopholes?

Summary way forward

- **We intend to adapt relevant provisions of Part 22 of the Companies Act 2006 and apply them to all companies to help them identify beneficial ownership. We will require companies to identify their beneficial ownership where that beneficial interest is held through a significant shareholding, or is otherwise known to the company. We will also place an obligation on beneficial owners to disclose their interest in the company to the company.**

- **We will continue to refine this model to ensure that it is as straightforward as possible for companies and individuals to understand and apply, whilst also minimises opportunities for companies and individuals to evade the requirements.**

(4) The central registry

This section covers the way forward in relation to the content of questions 11 to 17 in the Transparency and Trust discussion paper.

74. The discussion paper sought views on how the central registry would operate in practice, including the information to be provided to it and how often it would be updated. It also asked what information the company should hold and how often this should be updated. We proposed to use the model that applies currently in respect of a company's legal owners (shareholders) as a basis.

The information to be obtained

75. We asked whether legal ownership information requirements should be used as the basis for beneficial ownership requirements. This would mean that companies would obtain information on the names and addresses of their beneficial owners, and details of their interest in the company.

Views received

76. Businesses and business representative bodies were unanimously in favour of requiring the same information to be collected on beneficial owners as for legal owners – i.e. a name, an address and details of the individual's interest in the company: "It is difficult to see why more information should be required of beneficial owners than legal owners, given that rights of ownership in a company are conferred on the legal owner and any chain of ownership interests would ultimately need to be exercised through the legal owner." (ICAEW)

77. Conversely, the NGO community was in favour of looking to the company director model, rather than the legal owner model, as a basis for beneficial ownership requirements. This would mean that additional information would need to be held by the company and provided to Companies House – for example, a date of birth and a residential address. "The information included in the requirements should be comprehensive enough to ensure the identification of the individuals involved." (Save the Children)

Government response

78. We want to maximise the utility of the central registry for law enforcement and tax authorities and others, whilst minimising any additional burden on business. To that end we have carefully considered the different views expressed. The question of public access to this information is considered separately in section (5) below.

79. In discussion, enforcement agencies have outlined the need for information to be held such that they can clearly identify the individual(s) recorded as the beneficial owner. This requires more than just a name and an address. A beneficial owner recorded as 'J. Smith' is unlikely to shed much light on who really owns and controls the company in question.

80. We therefore propose that the company will be required to obtain and hold details of its beneficial owners':

   - full name;
   - date of birth;
   - nationality;
   - country or state of usual residence;
   - residential address;
   - a service address; and
   - the date on which the beneficial owner acquired the beneficial interest (and ceased to hold it, where applicable); and details of the beneficial interest and how it is held.

81. This is consistent with the information held on company directors, with the exception of information that is relevant for directors but not beneficial owners (i.e. former business name and business occupation).

82. This information would be maintained in a register held by the company.

83. We are continuing to develop how details of the beneficial interest are to be recorded on the company's register and at Companies House. It will be important that this information enables users of the register to build a meaningful picture of the company's ownership and control structure. However, we must carefully consider the impact of this, for example, in respect of potentially disclosing information that would normally be kept confidential (for commercial or other legitimate reasons). This might be of particular importance in the context of trust arrangements, LLP partnership agreements or shareholder agreements. We **welcome views** on this issue.

84. Given the concerns raised about inconsistency between the information to be obtained on beneficial owners and legal owners, we considered whether we should also increase the amount of information to be provided by legal owners. We think it important that enforcement agencies and others are able to identify beneficial owners. But we do not consider that there is an equivalent need in respect of legal owners that are not beneficial owners. We are also concerned about the potential cost implications of increasing data requirements for all legal owners. We will however give further consideration as to how we may – from an operational perspective – minimise duplication and maximise ease of understanding in terms of the information that companies are required to provide.

85. Like other registers required to be held by the company, the register of beneficial owners would be maintained at the company's registered office or other specified location and, with the exception of residential addresses, kept available for public inspection (i.e. accessible on request).

86. The Company Filing Requirements consultation sought views on proposals to reduce the burdens on companies by enabling them to opt out of holding their company registers provided all the information is available on the public register at Companies House (instead of at their registered office or other specified location). Government's proposals are outlined fully in the separate Response document, but we intend to take forward these proposals and apply them also to the beneficial ownership register held by the company.

87. The company would then be required to provide all of the information held to Companies House. We **welcome views** on this proposal, and specifically the proposed data fields required to be held.

88. With the same aim of minimising duplicative reporting and burdens on business, we also intend to provide that where a company (A) is owned by a company (B), and B is exempted from the requirements as set out above, or is a UK company and already maintains a register of beneficial ownership information, company A need only provide relevant details about company B, rather than about B's beneficial owners. This will still allow the full ownership chain of A to be traced.

89. We **welcome views** on whether there are additional types of entities or arrangements where companies should only be required to provide details about that entity/arrangement in their register, rather than about the beneficial ownership of that entity/arrangement. For example, entities that are in scope of other regulatory supervision and provide sufficient disclosures about their beneficial ownership.

Summary way forward

- **We intend to require companies to maintain a register of beneficial owners, containing information on the beneficial owners':**
    - **full name;**
    - **date of birth;**
    - **nationality;**
    - **country or state of usual residence;**
    - **residential address;**
    - **a service address; and**
    - **date on which they acquired the beneficial interest in the company and details of that interest and how it is held.**

- **This register will be kept available for public inspection at the company's registered office or specified location, with the exception of residential addresses[21]. All of the information held will be required to be provided to Companies House.**

- **Where a company (A) is owned by a company (B), where B is exempted from the beneficial ownership requirements or is a UK company and already maintains a register of beneficial ownership information, we intend to provide that A need only provide relevant information about B, rather than about B's beneficial ownership.**

Updating the information

90. We asked whether legal ownership update requirements should be used as the basis for beneficial ownership requirements. This would mean that companies would be required to provide beneficial ownership information to Companies House at incorporation, to update this information annually with any changes, and provide a full list of beneficial owners every three years.

Views received

91. Industry was divided as to how often information should be updated at Companies House. Some favoured replicating the model in force for updating legal ownership information, in other words, annual updates of any changes (with a full list being provided every third year). They felt it would be inconsistent to require more frequent changes to beneficial ownership information compared to legal ownership, that consistency would aid familiarisation and compliance, and that event-driven filing would impose a significant regulatory burden: "[…] the requirement to update […] should be no more than an annual reporting requirement […] If more frequent checking and reporting was required this could be considerably costly without necessarily providing benefits to offset these costs." (BBA)

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[21] As outlined in the separate Response to the Company Filing Requirements consultation private companies will have the ability to opt out of holding their register provided all the information is available on the public register.

92. ICSA noted the arguments for and against annual updates: "[…] it is possible that the information at the time of the annual return could be manipulated by those persons intent on avoiding detection". On balance they thought this was nevertheless preferable to event-driven filing. The CBI felt that this question needed to be considered in light of how often beneficial ownership information changed, and cautioned against using an arbitrary fixed point.

93. Other industry members were however in favour of changes being updated as they occurred. This was on the basis that information held by Companies House would otherwise quickly become out of date: "[…] companies should be required to update beneficial ownership information as the information changes […]" (Association for Financial Markets in Europe (AFME)). It was felt that annual updating would provide scope for evasion – for example, that companies acting illegally might change their beneficial ownership just before information was filed, and then change it back again after the return had been made. This view was shared by NGOs.

94. Almost without exception, respondents felt that beneficial owners should be required to proactively disclose changes to the company (although some questioned how effectively this could be implemented or enforced). Several respondents pointed out that the company would not necessarily know when beneficial ownership information changed.

Government response

95. We intend to require the company to update information held in its register of beneficial owners if it knew or might reasonably be expected to have known that a change to its beneficial ownership had occurred. For example, if 25% of a company's share capital was acquired by a single member of the company, the company should identify whether the beneficial ownership of those shares had also changed because it might reasonably expect this to be the case.

96. In parallel, we would require beneficial owners to inform the company of any changes to the information held by the company, for example, if they changed their address.

97. In considering when and how beneficial ownership information should be provided to Companies House, we have taken into account proposals in the Company Filing Requirements consultation to amend the annual return process. Government's intentions are outlined fully in the separate Response document, but would require a company to update, check and confirm information held by Companies House at least once in a 12 month period. We intend that beneficial ownership information should form part of this 'check and confirm' system.

98. We think beneficial ownership information should be provided to Companies House in the company's first year. We are therefore considering what information might be required on incorporation, recognising that this could only be a statement of intended or proposed beneficial ownership (given that the company would not at that point exist). The provision of this information would become part of a company's registration requirements.

99. We will also require the company to check, update as necessary and confirm that information held by Companies House accurately shows the full list of its beneficial owners at least once in a 12 month period, in the same way that information on legal

owners will be checked under the new check and confirm requirement. As part of this the company will be required to list **all** changes that have occurred to its beneficial information in-year. For example, if the beneficial ownership of a certain block of shares changed three times in the 12 month period, each change should be recorded as part of the check and confirm process.

100. We want all companies to be as transparent as possible and keep their information as up to date as possible. The measures we are proposing in the Company Filing Requirements package of reform will give them the flexibility to do this in the way that best suits the size and nature of their business. For example, companies will be able to update the information held at Companies House more frequently should they wish to do so. In addition, private companies will have the option to maintain their beneficial ownership register at Companies House[22]. Should they choose to exercise this option they would need to update the information held at Companies House as they become aware of changes (in the same way that they would otherwise be required to update their own beneficial ownership register).

101. We think maintaining consistency with the frequency of legal ownership updates is important – not least so that those searching the register get a full picture of the company's ownership and control. Requiring all changes to be shown on the public register should prevent companies from deliberately changing their beneficial ownership before or after a return. However, this is a key element of the policy that we would want to keep under review to ensure that the right balance between effectiveness and proportionality has been struck. We would therefore seek to take a power to amend, via secondary legislation, the frequency with which beneficial and legal ownership information is updated at Companies House. The need for the use of this power might be considered, for example, following the statutory review of the central registry (and see below).

Summary way forward

- **We will require companies to update the information held in their register of beneficial owners if they knew or might reasonably be expected to have known that a change to their beneficial ownership had occurred. We will also require beneficial owners to inform the company of any changes to the information recorded in the register of beneficial owners.**

- **We will require companies to provide an initial statement of beneficial ownership on incorporation. We will also require companies to update their beneficial ownership information at least once in a 12 month period. We intend to take this forward in the context of the new 'check and confirm' system, requiring all changes to beneficial ownership that have occurred in-year to be listed.**

- **We want all companies to be as transparent as possible and keep their information as up to date as possible. That is why companies will be able to update the information held at Companies House more frequently should they wish to do so. In addition, private companies will have the option to maintain and update their beneficial ownership register at Companies House directly –**

[22] See the Government response to the Company Filing Requirements consultation for further detail on these proposals.

meaning that changes would be updated at Companies House as the company becomes aware of them.

(5) Making information publicly accessible

This section covers the way forward in relation to the content of questions 19 to 21 and 23 to 24 in the Transparency and Trust discussion paper.

102. A key question in the paper was whether information held in the central registry should be publicly accessible, only accessible to enforcement agencies and regulated entities such as banks and accountants, or only accessible to enforcement agencies. The discussion paper noted the potential for concern around public access but outlined the Government's initial view that public access would help derive maximum benefit from the information.

Views received

103. Respondents to the paper were divided on this question. Whilst there was no objection to enforcement agencies having access to beneficial ownership information, some respondents were unsure of the benefits of public access.

104. A significant minority in industry were opposed to a public register, including representative bodies such as ICSA, the Law Society and the ICAEW. They argued that there was no clear reason why this information should be made public. Nor did they think that the perceived benefits of public access outweighed the general right to privacy in the matter of property ownership or potential risks to individuals' welfare and safety: "[…] this could over expose the financial position of potentially vulnerable individuals such as children […]" (Deloitte). They also raised various commercial concerns, including the potential negative impact on UK competitiveness and inward investment as a result of public access – particularly if the UK were to be a 'first mover' in this space: "We support the possibility of making a register publically available, provided that several factors are taken into account […] a multilateral but private register would be preferable to a UK-only public register." (CBI)

105. A few respondents, including EY and Allen & Overy, were opposed to public access but agreed that banks and other regulated professional bodies should have access to beneficial ownership information. They felt this information would help professional bodies fulfil their due diligence requirements whilst maintaining a degree of confidentiality in terms of who would see and handle the data. The Law Society did not however agree that regulated entities should have access, on the basis that the company would have the information and could provide it as required.

106. By contrast, civil society organisations were all in favour of public access. They argued that the benefits of a central registry would be substantially reduced if the information was not made public: "If it were the case that a proposal on transparency gave rise to a register that was itself secret the entire purpose of this proposal would be undermined […]" (Tax Research LLP). They felt that a public register would help create a level playing field, with businesses, consumers and citizens - including those in developing countries - able to identify who really owns the companies with whom they are dealing. They also felt that allowing public access to the register would increase its integrity, as there would be a greater chance of errors and anomalies

being detected. Finally, they argued that a public register would enhance the UK's reputation and desirability as a clean and trusted place to do business and invest. This view was almost unanimously shared by the significant number of private individuals who responded to this question, many in response to organised campaigns calling for a public registry.

107. Some businesses and business representative bodies were similarly supportive of public access, particularly those representing specific industry sectors. This group included the IoD, the Association of Investment Companies and the GC100: "[Public access] would support wider objectives relating to transparency and good corporate governance by allowing investors, the market and other companies to understand better with whom they are doing business." (IoD)

108. Most respondents felt that any information held by the company (as opposed to by Companies House) should be made available in the same way as information held in the central registry – i.e. publicly or not depending on their general point of view.

Government response

109. Having carefully considered the responses received to the discussion paper, the Prime Minister announced at the Open Government Partnership in October 2013 that beneficial ownership information would be publicly accessible. This was on the basis that placing information on individuals with significant interests in UK companies (i.e. beneficial owners) in the public domain has the potential better to achieve our objectives for the registry. These are primarily to promote good corporate behaviour and to support enforcement agencies tackling the misuse of companies. In particular, the Prime Minister noted that enabling public access would be; "[…] better for businesses here, who'll be better able to identify who really owns the companies they're trading with. It's better for developing countries, who'll have easy access to all this data without having to submit endless requests for each line of inquiry. And it's better for us all to have an open system which everyone has access to, because the more eyes that look at this information the more accurate it will be[23]."

110. Allowing public access is also consistent with the UK's commitment to openness and transparency, and builds on established principles of making information on UK companies and shareholders available on the public record. We will continue to push other jurisdictions to follow our lead, to ensure collective, global action.

111. However, at the same time we must ensure that information made available publicly does not expose individuals to the risk of identity theft or fraud. We have therefore carefully considered the balance between ensuring that information on the public register at Companies House is of real, practical use to developing countries, businesses, NGOs and others whilst ensuring that it does not become a tool for abuse.

112. There was strong consensus from all categories of respondent that residential addresses should not be made available publicly. This is consistent with the position for company directors, and we fully agree with this.

[23] PM Speech, Open Government Partnership, October 2013: https://www.gov.uk/government/speeches/pm-speech-at-open-government-partnership-2013

113. Law enforcement agencies have also confirmed the risk of fraud in placing full dates of birth, in combination with other information, readily into the public domain. The Company Filing Requirements consultation sought views on, and has concluded that, the 'day' of the date of birth should therefore be suppressed on the public record at Companies House, leaving the month and year available. We intend to follow this model in respect of beneficial owners.

114. The public register at Companies House will therefore contain information on the beneficial owners':

- full name;
- month and year of birth[24];
- nationality;
- country or state of usual residence;
- a service address; and
- date on which they acquired the beneficial interest in the company and details of that interest and how it is held.

115. Companies House will also hold a residential address and a full date of birth for the beneficial owner. This information will however only be accessible to specified authorities.

116. As is proposed for company directors, the full date of birth will still be available via the company's own register of beneficial owners. This means that, with the exception of residential addresses, all beneficial ownership information held by the company will be publicly accessible from the company itself on request.

117. We are carefully considering which authorities should have access to this protected information, and how. UK authorities will need to be able to make full use of the data. In addition, we also want overseas enforcement agencies to be able to access this information easily and cheaply – provided we can be satisfied that data shared in this way will be used and stored appropriately. We are currently working through a number of options as to how the UK might achieve this objective, including looking closely at whether it would be appropriate to follow existing models for information exchange.

118. We will also give careful consideration to whether credit reference agencies would require access to protected information (as they have currently in respect of company directors). We **welcome views** on this.

119. Beneficial ownership information held by Companies House will be made available digitally and Companies House is committed to providing information which allows free and open re-use. Whilst Companies House is statutorily required to recover any costs incurred in providing information, beneficial ownership information will form part of their ongoing strategy to make information on the public record freely available. We are also considering how to ensure that the cost of access to beneficial ownership information held on the protected register does not become a barrier to its use.

[24] Unless the company has opted not to maintain its own register of beneficial owners, in which case the date of birth will be available on the public record at Companies House (see the Company Filing Requirements response document for more information).

Summary way forward

- **The public register at Companies House will contain information on the beneficial owners':**
    - **full name;**
    - **month and year of birth[25];**
    - **nationality;**
    - **country or state of usual residence;**
    - **a service address; and**
    - **date on which they acquired the beneficial interest in the company and details of that interest and how it is held.**

- **Companies House will also hold a residential address and a full date of birth for the beneficial owner. This information will however only be accessible to specified authorities.**

- **We are considering which UK and overseas authorities should have access to protected information held at Companies House, and how to ensure that this is as easy and cheap as possible whilst also ensuring that data is appropriately stored and held. And we are considering how to ensure that access to company beneficial ownership information on the public register is also as easy and cheap as possible.**

Exemptions from public disclosure

120. We sought views in the paper on whether, if beneficial ownership information were to be made publicly accessible, there should be exemptions for individuals at risk of harm.

Views received

121. NGO views on this question were divided. Around half felt that allowing any exemptions would open up the system to abuse. They argued that they could not see why the position for beneficial owners' personal data would be any different to that of directors or shareholders (for whom there are no exemptions). The remainder did however see the need for a tightly defined set of exemptions. This was provided that a high bar for obtaining an exemption was set, and that the exemption and the reason for it was recorded on the public register.

122. Business and business representative bodies were also divided. Around half were again in favour of a carefully designed and limited exemptions framework, including the IoD, ICAEW, GC100 and Law Society: "[…] There may be a case to allow companies to apply for exemption from public disclosure on the basis of safety, along

[25] Unless the company has opted not to maintain its own register of beneficial owners, in which case the date of birth will be available on the public record at Companies House (see the Company Filing Requirements response document for more information).

the lines of confidentiality orders for directors where harassment or identity fraud may be an issue." (GC100)

123. Respondents in favour of an exemptions framework generally agreed that any exemptions framework applied in respect of information made available via the registry should be similarly applied to information made available via the company.

Government response

124. We intend to allow some exemptions from public disclosure. We consider that certain beneficial owners may be put at risk either because of the nature of the company in which they invest or due to their own personal circumstances. Such beneficial owners may have deliberately sought to maintain a degree of anonymity by choosing to hold a beneficial rather than legal interest in the company's shares. We consider that in stripping this anonymity away, there is a need to ensure that some other form of protection exists.

125. Provision is already made in company law for addresses not to be made available for public inspection, on application to the Registrar of companies (Companies House), where there is a serious risk of violence or intimidation. The Registrar considers the facts of the application, seeking views from other relevant bodies, and makes a decision accordingly. Specified authorities may however still access this information (and see above). We think this would be an appropriate basis on which to develop an exemptions framework in the context of beneficial ownership.

126. In terms of the information to be shown on the public record where an exemption has been granted, we are minded to propose that the record should state that an exemption has been granted under the relevant statutory provision. Otherwise those looking at the register will see an incomplete picture of the company's ownership and control, without realising that this is the case. Enforcement agencies might not know that there is further information that they can obtain on request.

127. We also think that such protected information should not be available for public inspection via the company's own register. We will give further consideration to how this might be applied. We **welcome views** on the proposed model for limited exemptions from public disclosure of beneficial ownership information.

Summary way forward

- **We intend to allow applications to the Registrar of companies to protect beneficial ownership information from public disclosure in exceptional circumstances. The Registrar will review the grounds for the application, seeking additional information as required, and grant or refuse the application accordingly. Where the application is granted, we are minded to require that fact to be stated on the public record and that the company should also protect this information on its own register. Specified authorities will remain able to access this protected information.**

(6) Enforcing the new requirements

This section covers the way forward in relation to the content of question 10 in the Transparency and Trust discussion paper.

128. The paper did not explicitly seek views on the offences that would apply where individuals or companies failed to provide beneficial ownership information, or deliberately provided false information. We did however seek views on whether investigative powers in the Companies Act 1985 – which allow the Secretary of State to investigate company ownership – should be extended to specified law enforcement and tax authorities.

Views received

129. Respondents were, with one exception, broadly in favour of existing powers of company investigation being extended to law enforcement and tax authorities. Some did however note that there would need to be appropriate checks and balances in place and a clear understanding of how these powers would be used, and by whom. Global Witness and CAFOD felt the extension of these powers was less important that making information in the registry accessible publicly.

130. In further discussions law enforcement agencies thought that their current powers of investigation are sufficient for the purpose of company investigation.

Government response

131. We consider that criminal offences will be necessary where individuals or companies fail to provide beneficial ownership information, or deliberately provide false information. We intend to use current criminal offences for breaches of company law as the precedent.

132. The insertion of offence provisions will be beneficial from the perspective of consistency with the existing company law framework and should help incentivise compliance. In addition, and perhaps more importantly, criminal offences should help enforcement agencies tackle the misuse of companies. Company law offence provisions, and their robust enforcement, might deter some individuals or companies from misusing the corporate form, or from incorporating a company in the UK. They may also assist enforcement agencies in the investigation, prosecution and disruption of more serious offences such as money laundering, terrorist financing, tax evasion or fraud.

133. We do not intend to extend the Secretary of State's powers of company investigation to additional law enforcement and tax authorities. Those agencies will instead continue to rely on their existing wide-ranging powers of investigation and enforcement.

Summary way forward

- **We intend to extend or replicate existing company law criminal offences to tackle situations where companies or individuals break the rules.**

- **We do not propose to extend the Secretary of State's investigative powers under the Companies Act 1985 to law enforcement and tax authorities.**

134. Implementing a central registry of company beneficial ownership information is a significant and complex reform. This document sets out the broad parameters of our proposed framework for change. Over the coming months we will continue to refine this framework and develop the detail. As we do so, we will continue to engage with interested parties and relevant experts.

135. Reform will require primary amendments to the CA06 and we will seek to legislate for this as soon as Parliamentary time allows. We will carefully consider the transitional arrangements that will be required for existing companies.

136. As is usual in company law, we will look to implement the policy detail through secondary legislation. We will look to do this as soon as practicable after the primary legislation has received Royal Assent. This will also provide us with the necessary flexibility to refine the policy over time. For example, to adapt to changing circumstances and in the light of ongoing monitoring and review of the policy. As part of this we intend to place a statutory duty on the Secretary of State to publish a review of the efficacy and proportionality of the registry within three years of implementation. This should include consultation and would provide an opportunity to consider the need for use of, for example, the power to increase the frequency with which beneficial ownership information is updated at Companies House.

137. The question as to when we will make the central registry of beneficial ownership information operational is important. We are currently considering this in the context of the need for clear and widespread guidance and communications for companies, simultaneous implementation of wider changes to company filing requirements (as referenced above) and the parallel system changes that will be required at Companies House. We will look to implement the registry as soon as practicable after the necessary primary and secondary legislation is in place.

138. In parallel to our domestic reform, the UK will continue to lobby other jurisdictions to take similarly ambitious steps with regard to transparency of company ownership and control, through the EU, G8, G20 and the FATF:

- Building on the progress made through the UK Presidency of the G8, G20 Finance Ministers have been tasked with reporting back to Leaders on the steps they will take to implement the FATF standards on beneficial ownership by leading by example. The UK will continue to work with the Australian Presidency to encourage ambitious outcomes on this issue through the G20.
- We will continue to encourage the FATF's focus on 'effectiveness' through the next round of evaluations of its Members, in particular to assess whether countries have effective regimes that ensure legal persons and arrangements are prevented from misuse (e.g. money laundering and terrorist financing) and that information on their beneficial ownership is available to competent authorities without impediment.
- We will continue to press our EU counterparts to support UK proposals for mandatory, publicly accessible central registries of company beneficial ownership information through the Fourth Money Laundering Directive.

2. Bearer shares and the opacity of company ownership

This section covers the way forward in relation to the content of questions 27 to 30 in the Transparency and Trust discussion paper.

139. Bearer shares permit a level of opacity incompatible with our ambitions for corporate transparency. Although they can be used for legitimate purposes, the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) and FATF have both identified bearer shares as high risk and as useful for criminals, facilitating tax evasion and money laundering. This is why a number of other jurisdictions have now banned them. It is important for the reputation of the UK that we take action on bearer shares and achieve compliance with these international standards, and our G8 Action Plan.

140. Bearer shares[26] certify the bearer of the warrant is entitled to the shares represented by it. This means the legal ownership of the share can be transferred simply by passing the physical share warrant from one person to another - there is no record of ownership, or change of ownership, on the company's register of members. These shares are therefore a means for individuals to avoid any record of their ownership of a stake in a company, so allowing them to conceal or transfer control.

141. The latest data from Companies House show that around 1200 UK companies have issued bearer shares[27]. Around three quarters of these are small private companies. By the very nature of bearer shares we cannot know how many shareholders own these, but we estimate there might be around 3000 bearer shareholders of UK companies.

142. In the discussion paper we invited views on the proposal to abolish bearer shares. In particular we asked respondents whether there should be a set period for converting existing bearer shares and whether there were additional measures that we might take.

Views Received

143. The proposal to abolish bearer shares resonated with a range of stakeholders, garnering almost universal support from NGOs, law enforcement agencies and business representative bodies. Responses highlighted the inherent potential for misuse, and the potential for the opacity to undermine good corporate governance practice in the UK. The NGO Open Corporates explained that "bearer shares completely undermine the concept of understanding who or what is behind a company, not to mention enabling corruption, fraud, and criminal behaviour… we see no public benefit for their existence."

144. Overall we received sixty-one responses covering bearer shares and, of these, only two respondents were opposed to their abolition. Concerns were raised by both - a

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[26] Bearer shares are also known as 'share warrants to bearer'. They are defined in Section 122 and Section 779 of the Companies Act 2006.

[27] There are 1233 UK bearer share issuing companies, of which around 787 are still trading, the remainder being dormant. This figure represents 0.04% of companies. If we take account of dissolved companies 2400 UK companies have issued bearer shares.

bearer share issuer and the GC100 - about the ability of a full prohibition to achieve our stated aims. There were fears those holding them for legitimate use might be penalised while criminals would find other ways to hide their activities.

145. Of the responses supporting abolition, around one in ten drew specific attention to the importance of having transitional arrangements in place for the surrender of the existing bearer shares for conversion into registered shares. Two respondents, while in favour of prohibiting the issuance of new bearer shares, were not convinced of the need to act on existing bearer shares, reasoning that they are sufficiently uncommon.

146. The suggested length for a period for surrender ranged from six months to fourteen years, with the most common response being two years. Those respondents in favour of a longer period for surrender, such as the Bar Council and the IoD, were concerned about non-UK bearer shareholders and the complications arising from not being able to communicate the changes to bearer shareholders, including the vulnerable. Those opting for a shorter transitional period felt it should happen as quickly as is mechanically feasible to ensure transparency.

147. The responses paint a clear picture in support of abolishing bearer shares. The most commonly cited benefits included “closing a loophole” and “improved business transparency”, while the Fraud Advisory Panel, for instance, highlighted “significant benefits for law enforcement and anti-fraud agencies and investigations”. Most respondents were clear these benefits would outweigh the “minimal” costs.

Government Response

148. Having considered the full range of responses we are confident that a full abolition of bearer shares is desirable to support corporate transparency. As demonstrated above, this proposal resonated with the majority of respondents, with the proviso only that we allow sufficient time for existing bearer shareholders to surrender their shares.

149. We are giving careful consideration to the process and timings to achieve this goal, and set out our thinking below. **We welcome views on this process and its appropriate duration.** It is important that we get the detail right and can put a robust process in place, while protecting the rights of shareholders and minimising the impact on companies.

150. Royal Assent: We propose that companies will have **two months** following Royal Assent before the policy comes into force. In the lead in to and during this period we will encourage companies to begin communicating with their bearer shareholders to inform them about the impending changes and to encourage them to surrender their warrants ahead of the changes (where the company’s articles permit this).

151. Prohibiting the issue of new bearer shares: Once the policy comes into force the issue of new bearer shares will be banned.

152. Surrender of existing bearer shares: There will be a period during which bearer shareholders can surrender their existing bearer share warrants and convert these to the registered shares specified in the warrant, notwithstanding any prohibition in the company’s articles to the contrary. We propose that **nine months** is an appropriate duration. This is shorter than some of the time periods proposed, but we judge it is important to act expeditiously to secure UK compliance with international obligations.

The Global Forum will consider whether our process for abolishing bearer shares represents an appropriate mechanism for identifying the owners of bearer shares. We will be assessed on whether we are effectively meeting the standards according to our timeline for eliminating the shares and the point at which (former) shareholders are no longer able to access the value of their shares. For this reason operating a slower system or an alternative mechanism during this period (such as a trust arrangement model) is not considered sufficiently robust; bearer shareholders could wait until the latest possible date before coming forward to claim the value of their shares, and so their ownership of the shares could remain hidden for years.

153. We propose to set out steps that companies must take within the **first of the nine months** to communicate with their bearer shareholders and tell them about the changes. This formal requirement for communication will follow the 'lead-in' period set out above. This will legally ensure reasonable action is taken to make bearer shareholders aware of the changes, in order for them to take swift action to surrender their warrants.

154. From **month two of the nine months,** bearer shareholders will not be able to vote, receive dividends or transfer the share warrant. We consider bearer shareholders will not be disenfranchised of their rights as these are available to them on the surrender of their bearer share warrants for conversion to registered shares.

155. Companies would be required to communicate with their bearer shareholders again at **month eight** if there are bearer shares remaining. The proposed timescale is intended to encourage reputable companies to communicate with and encourage bearer shareholders to surrender their warrants to avoid unnecessary costs of making an application to court.

156. Cancelling remaining bearer shares: Companies with bearer shares remaining **at the end of month nine** will have a further **three months** to apply to court to cancel the remaining shares. Bearer shareholders will no longer be able to surrender their share warrants at this stage. This provides an incentive for bearer shareholders to take action during the period for surrender preceding this. On cancellation the company will be required to pay the value of the bearer shares into court, which will be held on trust in case of exceptional circumstances.

157. Exceptional circumstances: Bearer shareholders will be entitled to apply to the court for the value held on trust where they can show exceptional circumstances as to why they could not surrender the shares. We propose that **three years** is an appropriate duration.

Summary way forward

- **We intend to prohibit the creation of new bearer shares and we will provide a set period of time for existing bearer shareholders to surrender their bearer share warrants for conversion to the registered shares specified in the warrant.**

- **After the set period for surrender companies with bearer shares remaining would be required to make applications to court for the cancellation of those shares.**

- **We are continuing to develop the precise detail of our proposed approach and testing this with stakeholders. As part of the process of reform, information about the detail of the change and how to comply will be disseminated through Government channels of communication and through Companies House communications.**

3. Opaque corporate control through corporate directors

This section covers the way forward in relation to the content of questions 35 to 38 in the Transparency and Trust discussion paper.

158. Directors influence and are responsible for actions taken in a company's name, whether normal functions, steps precipitated by financial difficulties or using the company as a vehicle for illicit activities. In the current UK framework, there is potential for a lack of transparency and accountability of directors. This can arise when the director registered at Companies House is a front obscuring those who really exercise control, which we cover in the next section. It can also occur through the use of corporate directors – where a company director is not a natural person (an individual) but a **legal person** (another company).

159. Corporate directors can bring about a lack of transparency and accountability with respect to the individuals influencing the company. A person's details and relationship to the company can be challenging to identify, which, among other consequences, can hinder law enforcement investigations. Even when they are identifiable, there may be no legal route to holding these individuals to account[28]. More broadly, a company acting as a director, instead of an accountable individual, could suggest the potential for a deficit in corporate governance and oversight.

160. Under the Companies Act 2006, companies are permitted to appoint corporate directors on the basis that at least one of their directors is an individual. Limited Liability Partnerships (LLPs) are not companies but are subject to many of the provisions in the Companies Act 2006; they can appoint corporate 'members' without restriction. Across the UK, 67,000 (2 per cent of) companies and LLPs have a corporate director or member. In some other countries, such as Germany and Australia, only individuals can be company directors.

161. In the discussion paper, we sought views on the proposal that company directors should be individuals. We wanted to consider if UK companies should be prohibited from appointing corporate directors, on the basis this would increase the transparency and accountability of those who really control UK companies.

Views Received

162. Support for change to the law, which currently allows a company director to be a legal person (another company), was clear. Nearly half the responses were supportive of a complete prohibition of the use of corporate directors in the UK. This support came from NGOs in favour of a range of robust measures to improve corporate transparency. Law enforcement agencies were also supportive, since the opacity afforded by corporate directors can hinder their investigations. Support also came from business representative organisations - the IoD considered a director's role to be an accountable 'human face' of a company. Some individual professional services businesses, including Grant Thornton, submitted that on balance action was warranted because there was always an individual decision-maker behind a corporate director.

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[28] See for example HMRC v Holland (2010) UKSC51

163. Several respondents felt there were situations where the use of corporate directors was valuable. They consequently had concerns about a **complete** prohibition. These respondents demonstrated the importance of preserving efficient business practice where corporate directors might be used for particular purposes, and where there might be a lower risk of financial crime and high standards of corporate governance or regulatory oversight. Such situations were reported to include: group structures involving large (and listed) companies, pension funds, charities, and Open-Ended Investment Companies (OEICs). Such responses came from some business representative organisations and from some large multinational groups.

164. If we were to account for these concerns in some way, for instance through exemptions to a wider prohibition, then around three quarters of respondents were supportive of steps to limit the use of corporate directors.

165. Very few reasons were presented for not limiting the use of corporate directors, beyond those points relating to specific circumstances as described. A small number of respondents offered alternative approaches (including licensing corporate directors).

166. We also asked about suitable timeframes for transition to a new regime. Responses ranged from 6 months to 5 years. Overall, one year was the most widely quoted figure.

Government Response

167. On balance, we want to ensure - and send a signal - that for the majority of UK companies appointing a company (or legal person) as a director is not an option. Directors should normally be individuals (natural persons). This is a clear change to the UK's approach to corporate transparency and corporate governance.

168. At the same time we believe we need a pragmatic approach. Corporate directors are considered useful in some parts of the UK economy, particularly areas where, given wider disclosure requirements and regulatory regimes, concerns about corporate transparency and corporate governance are less acute than elsewhere. Throughout these reforms, and in the complementary reforms to Companies House Filing Requirements, we are seeking to implement improvements to the business environment without increasing unnecessary burdens.

169. We have therefore decided to pursue a default prohibition of corporate directors, whilst additionally providing for limited exemptions to that prohibition. Most companies will not be able to appoint a corporate director. But a company will be able to continue to use or to appoint a new corporate director if it is within scope of the exemptions. We can see a case for consistency and the inclusion of LLPs in this system, alongside companies, and **welcome views** on this point.

170. The basis for the exemptions will relate to situations where the use of corporate directors provides particular business benefits, where that coincides with areas of low risk of financial crime, high standards of corporate governance or high levels of disclosure or regulatory oversight. Based on responses to the discussion paper, we are currently considering exemptions applying to:

- Group structures including large listed companies
- Group structures including large private companies
- Charities[29]

We also intend that the use of corporate directors by OEICs (where they are licensed by the FCA), and the use of corporate trustees, should continue. We would be happy to consider scope further as we develop this package for full implementation.

171. The new position will apply to new director appointments, and to existing corporate directors. To reduce abuse of the UK company structure, it is important we take steps to remove existing corporate directors (outside the scope of the exemptions) from the system.

172. We will introduce a robust system of compliance to ensure the use of corporate directors is indeed limited. This will include updated requirements to notify Companies House and enforcement thereof, including criminal offences where necessary.

173. To implement these changes, we will bring forward primary legislation as soon as Parliamentary time allows. This will update the current specification that only one director of a company need be an individual (a natural person), and set out the default position of directors being individuals, not companies. We intend to define the exemptions under which an appointment of a corporate director could continue to be made in parallel in secondary legislation.

174. We propose a one year period for companies to become compliant with the new regime, which we consider should be sufficient given effective advance notice. We will provide more detail in guidance as to how compliance should be achieved, including details of enforcement.

Summary Way Forward

- **We intend to prohibit the use of one company as the director of another company - corporate directors - with limited and specific exemptions where the use of corporate directors is of higher value and lower risk.**

[29] We are considering the basis of exemptions for policy reasons alongside legal analysis of the scope of the change, in relation to different classes of legal entity.

4. Opaque corporate control through irresponsible 'front' directors

This section covers the way forward in relation to the content of questions 31 to 34 in the Transparency and Trust discussion paper.

175. Directors of a company occupy a crucial role. This role will normally be transparent, and involve a director managing a company with a view to success, and in accordance with their statutory duties. There is, however, potential for a lack of transparency and accountability when the director registered at Companies House is an irresponsible front, obscuring those who really exercise control. These arrangements can facilitate criminal activity using the company as a vehicle, or allow someone who has been disqualified as a director to continue to have a key role in a company.

176. These arrangements are inherently difficult to detect. One observable symptom is multiple directorships - 2000 individuals in the UK currently hold more than 50 directorships and 6150 individuals hold more than 20. These instances need not directly relate to illicit activity and there are perfectly legitimate reasons for why an individual may hold multiple directorships. They do, however, demonstrate the potential for abuse in the current system, and moreover the potential for poor corporate governance in those companies.

177. In the discussion paper, we set out our intention to reduce opaque control over companies through what we described as 'nominee directors'. 'Nominee directors' is not a clear term. In the eyes of the law, all registered directors are the same (whether they are active or a front for other activity). At the same time, a director can be 'nominated' for their role by another party and from then on act entirely properly, which is not a situation we intend to alter. In this section we will use the term 'front' director to refer to those registered but irresponsible directors who engage in unacceptable behaviours and seek to obscure control and avoid clear lines of accountability to no good end.

178. In the discussion paper we proposed specific measures including the registration of front directors and those who control them, and making it a criminal offence for a director to take formal legal steps to divest their powers. We set out the challenges of defining undesirable behaviour and separating it from similar behaviour which, for the legitimate, is an inherent part of running a company.

Views Received

179. The need for a new approach to irresponsible front directors and those who control them was underscored by a range of parties, including business representative bodies, law enforcement and NGOs. The Asset Based Finance Association (ABFA) explained that "any measures to enhance transparency in these respects[30] would be likely to bring positive benefits to the UK economy," adding that "ABFA members would not normally tend to deal with businesses that have such arrangements in

[30] Referring to 'nominee' directors, corporate directors and bearer shares.

place." The Serious Organised Crime Agency (SOCA)[31] explained that "the use of nominees is a route used by criminals to distance themselves from the companies they control as a way of obscuring the ownership of assets," while Open Corporates were clear they had "yet to hear how either the public good or a respectable business sector are benefited by [the] existence [of irresponsible front directors]."

180. However, there was only limited support for the specific proposals in the discussion paper. There was concern that making it a criminal offence for directors to take formal legal steps to divest themselves of the power to run a company could be easily circumvented. There was also little support for a requirement for directors to register if they were operating as a 'nominee,' and on whose behalf.

181. Both these options were challenged by legal experts, business and its representative organisations as unworkable, with the level of delegation to be deemed illegitimate unlikely to be effectively defined or enforceable. This could, on the one hand, have an adverse effect on businesses seeking to act legitimately, and, at the same time, mean that those whose behaviour is more concerning could take steps to avoid liability. As the Institute of Chartered Accountants in England and Wales (ICAEW) put it, "given that there is no established meaning of the term 'nominee director', it does not seem appropriate that any attempt should be made to disclose by reference to it. The practices which are considered undesirable (and in some cases already unlawful) can be addressed by other means."

182. The consultation process provided new perspectives on other means of addressing undesirable practices relating to front directors.

183. A clear thread running through responses was the existing law, which already sets out what it means to be a director. A large number of respondents pointed out that directors acting as an irresponsible front for someone else were likely to be breaching their general duties set out in statute. There was a sense that, in practice, there is a widespread lack of understanding and compliance with the duties, responsibilities and liabilities of directors.

184. We asked related questions in the discussion paper about the value of better communicating directors' duties to them, and about the value of education for directors, particularly directors who have been disqualified.

185. The vast majority of those who responded were clear that government could do more to communicate directors' duties to them. Only two respondents thought communication was not required. A subset of respondents suggested there would be value in a confirmation from directors that they had indeed received and understood such communications, or that they understood their duties.

186. When discussing education for disqualified directors, over a quarter of respondents, (including several individual companies and the IoD) spontaneously pointed to the value of intervention *earlier*, to influence behaviour sooner and precede any potential misconduct.

[31] SOCA provided evidence at the time of consultation over the summer of 2013. The National Crime Agency which now includes many of the relevant functions was formed in October 2013.

187. There was little support in principle for training or qualifications for directors (at any stage). Several respondents highlighted the potential cost barrier and deterrence of entrepreneurship.

188. Overall, the views received showed a role for government in informing (rather than training) directors, and in promoting directors' understanding of their role from the point they embark on it (rather than after misconduct or disqualification).

189. At the same time, the responses to the discussion paper revealed an appetite for tightening the enforcement regime. Firstly it was clear that directors acting irresponsibly as a front should be accountable. The IoD explained that "anyone who takes on the role of director without the intention of fulfilling their duties should do so at their own risk, and should be subject to the full weight of legal liability." As previously mentioned, several respondents, including the Law Society, highlighted that irresponsible front directors will be in breach of their current statutory duties. Overall, there was a sense it was important to make sure not only that the duties were clear from the outset, but also that the enforcement regime was more effective in countering breaches of them.

190. Secondly it was clear that those who seek to control an appointed director – those who stand behind their 'front' - should also be accountable for any wrongdoing. Several interested parties noted the relevance of the existing 'shadow director' construct to our discussion of those who might influence irresponsible front directors. In certain instances of wrongdoing, shadow directors, who exercise control without being registered as or acting as a director, are liable under current UK company law. Though noting the need for careful consideration, building on the concept of a shadow director was suggested by some as a way of taking forward our thinking about making those who seek to control a director accountable for wrongdoing.

Government Response

191. The overall response to the discussion paper showed the need to act to address front director arrangements, but also the limitations of the specific proposals in the discussion paper. We therefore intend to amend those proposals.

192. We do not currently plan to proceed with the proposal to require the registration of front directors and those who control them. Nor will we proceed with the proposal to make it a criminal offence for a director to take formal legal steps to divest their powers.

193. We now propose to develop a simple system, linked to a streamlined process of director registration[32], to increase awareness of directors' duties, and of directors' liabilities. This will entail the Registrar of Companies contacting newly appointed directors to inform them, amongst other things, of their responsibilities and legal obligations as a director, and that they might want to consider their position if they are unwilling or feel unable to meet them. Our intention is to support this system with more widespread improvements in the availability and content of information about directors' duties in the UK. This will promote a fundamental level of awareness of

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[32] In the Company Filing Requirements consultation we considered proposals to remove the director's Consent to Act. The government is setting out a streamlined process of registration of a director in the response to that consultation.

directors' duties across the UK and increase the likelihood of future compliance. This should help deter those who act as irresponsible front directors, who might currently, and wrongly, believe they can do so without being accountable.

194. We do not, however, plan to pursue a more onerous requirement for compulsory director education, training or qualifications (either for new or disqualified directors). While there are potential benefits, this seems a disproportionate response because of the risk of burdening UK companies.

195. We also plan to tighten the legal system to hold to account both directors who front for others, and those who use front directors.

196. The civil law basis on which directors are disqualified will be strengthened to ensure a full range of unacceptable behaviours must be taken into account by the court when considering unfitness (see section 5). Of relevance to opaque arrangements involving company directors, the court will be required to consider any misfeasance or breaches of duty (including the director's general duties set out in the Companies Act 2006).

197. We also **welcome views** on new means of increasing the accountability of those who seek to control a front director to no good end. We have considered carefully the responses to the discussion paper which suggested we could build on the current concept of a shadow director to do this. The definition of a shadow director is restricted to those who control all or the majority of the directors on a company's board[33]. The intention with a new proposal would be to make clear that having a single director act in your place is no longer a way of avoiding accountability. We are currently considering the best means of achieving this, and particularly what level of sanction is appropriate.

198. The issues discussed here also raise the question of whether the general statutory duties of directors should apply to those who control directors – perhaps including both shadow directors (as currently defined), and even those who control a single director. Currently, as set out in the Companies Act 2006 s170(5), the general duties have limited application to shadow directors ("where, and to the extent that, the corresponding common law rules or equitable principles apply"). Some considered that not applying the general statutory duties of directors to shadow directors in the Companies Act 2006 was an unhelpful omission, and case law has continued to consider shadow directors' fiduciary duties. We consider there are advantages to an explicit application of the general statutory duties of directors to shadow directors (and potentially even to those who control a single director), not least to remove any potential lack of accountability.

199. We **welcome views** on new means of increasing the accountability of those who control a director, particularly with respect to achieving accountability while avoiding undesirable or unintended consequences.

200. In implementing these measures we will take the important non-regulatory steps to improve the general level of information available concerning directors' general statutory duties.

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[33] S251 of the Companies Act 2006 defines a shadow director as a "person in accordance with whose directions or instructions the directors of the company are accustomed to act" and detail in sub-sections (1) to (3).

201. We will also prepare the necessary legislation, bringing forward primary legislation as soon as the Parliamentary timetable permits. This will include amendments to tighten the directors' disqualification regime (as set out in section 5), and would be the means of making any necessary amendments to the primary legislation concerning increased accountability for those who control a director.

202. We will consider implementation of these proposals in their broader context. With respect to the new and specific means of ensuring directors have understood their duties, we will integrate this change into the wider processes around appointment and registration of directors.

Summary Government Response

- **We will improve the general standard of information available with respect to directors' general statutory duties, to increase awareness of the potential for breaching them by acting as an irresponsible front.**

- **We will legislate as necessary to underpin new and specific means of contacting individual directors to ensure they have understood their duties.**

- **We will make explicit that the court is required to take account of breaches of any legislation, which will include breach of directors' duties, when considering the disqualification of a director.**

- **We are considering increasing the reach of legal accountability to cover those who control a single director, and considering extending the directors' general statutory duties to those who control directors.**

5. Directors' accountability: Tackling misconduct

This section covers the way forward in relation to the content of questions 43 to 49 in the Transparency and Trust discussion paper

203. The crucial role of the company directors warrants a robust system for removing the small number who are deemed to be unfit to act in that capacity. The UK has a longstanding and respected civil system which protects business and society from unfit directors and enhances wider confidence in the UK's business environment. On average, some 1,200 directors are disqualified each year out of approximately 30,000 directors of failed companies. Analysis suggests that for every director disqualified there is a potential saving to the market of about £100,000 of damage they might otherwise have caused.

204. The Company Directors Disqualification Act 1986 (CDDA) provides for the disqualification of directors, either by court order or by a director offering, and the Insolvency Service (acting on behalf of the Secretary of State) accepting, an undertaking not to act in the management of a company for a period. Disqualification can last for up to 15 years, depending upon the seriousness of the misconduct, while breach of a disqualification order or undertaking is a criminal offence.

205. Under the current system, the court must take account of matters set out in Schedule 1 to the CDDA when determining whether a director is unfit[34] under the grounds for disqualification in sections 6 and 8 CDDA. While wider legislation and case law have developed, there have been no changes to Schedule 1 for nearly thirty years. The fact courts regularly take into account factors beyond those listed in the (non-exhaustive) Schedule suggests it has become inadequate, and the system is no longer clearly defined anywhere. More profoundly, there is a risk it does not capture the range of behaviours which should affect a determination of unfitness in accordance with the principles of transparency, accountability and fairness.

206. An effective disqualification regime in which behaviours considered to amount to unfitness are clearly defined is crucial for trust in the UK business environment, but also important for directors. The law should clearly set out for directors the breadth of misconduct that could result in sanction.

207. The discussion paper suggested that an updated list of matters to which the court or the Secretary of State should have regard could cover four additional areas:

    a. **Material breaches of sectoral regulation:** Although the court and the Secretary of State currently take a proportionate approach, the law does not explicitly provide for consideration of material breaches of relevant sectoral regulation. The discussion paper sought views on changing this, noting also that there is a strong argument that material breaches of sectoral regulation are also incompatible with fulfilling directors' duties as set out under the Companies Act 2006. Section 7 covers wider actions to improve the interactions between the enforcement of sectoral regulation and company law.

[34] The Secretary of State (or the Insolvency Service acting on his behalf) is required to have regard to the same matters when deciding whether to accept an offer of an undertaking from a person not to act in the management of any company.

b. **The wider social impacts of the failed company:** The law does not explicitly provide for taking into account the scale of loss suffered by creditors resulting from the misconduct and any wider economic or social impact when considering whether to disqualify a person and for how long. Given the catastrophic failure of some firms and the impact this has had on wider society over recent years, the discussion paper sought views on changing this, on how 'wider social impact' would be defined, and in particular whether some form of materiality test should be applied.

c. **The nature of creditors and the degree of loss they have suffered:** Although Schedule 1 already requires regard to be had to conduct which has resulted in any failure by the company to supply goods or services which have been paid for (in whole or in part) and where a director has demonstrated prejudicial treatment to one creditor, or class of creditors, at the expense of others, the law does not provide for the courts to treat vulnerable creditors differently to other creditors, or to have regard for any others who may have suffered loss indirectly. The discussion paper sought views on whether there are circumstances - perhaps involving vulnerable consumers or a high volume of deposits or pre-payments – under which company directors ought to pay more regard to those creditors; their actions in doing so would be a relevant factor to be taken into account when considering disqualification.

d. **The director's previous failures:** The fact that a director has been involved in a company that has failed does not on its own suggest the director is unfit; companies can fail for reasons outside a director's control, and the director will only be disqualified if he or she bears some responsibility for the insolvency or misconduct. But in disqualification cases currently, the law does not require regard to be had to any previous behaviour or culpability. The discussion paper proposed that the CDDA should be amended to ensure that the court can take greater account of previous failures, in part to ensure the market can be protected from the 'honest incompetent' as well as the clearly culpable.

Views Received

208. While many supported the principle of the court or Secretary of State giving regard to wider matters than currently expressed in Schedule 1, there was little support for simply taking the existing Schedule 1 and adding to it to explicitly include the above (or, indeed, other) matters. There was a view, voiced by senior counsel[35] that Schedule 1 could never (and should not be) seen as an exhaustive list. This revealed the need for an overhaul not just of the matters contained in Schedule 1, but also of the shape of it.

Regard for material breaches of sectoral regulation

209. Just over half the respondents agreed that breaches of sectoral regulations should be matters which are taken into account by the Court or the Secretary of State in determining unfitness, though some said that materiality should be considered (including whether the breach was systemic or isolated).

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[35] Queen's Counsel and leading disqualification expert

210. Some argued that courts can and sometimes do take this matter into account under the current system because, as the Law Society and the Insolvency Lawyers' Association explained, Schedule 1 is not currently limiting. On the basis, however, that Schedule 1 could usefully be updated and additional matters included within it, there were few objections to the proposed change to explicitly include material breaches of sectoral regulation as a factor that must be considered.

211. There were some concerns about deterring directors. Akzo Nobel thought there was “a clear balance to be struck between maintaining effective controls and alienating senior managers from taking up sectoral directorships”, while Isonomy, a re-structuring specialist, were supportive but “only if such breaches are proven” and disqualification not “automatic”.

Taking into account wider social impacts

212. The majority of respondents expressed the view that the wider social impact of a corporate failure was indeed a matter to be taken into consideration when determining unfitness of a director. BDO LLP, a restructuring specialist, said that “obvious examples” included “where a significant number of members of the public or the public purse face increased financial loss because of the actions of directors”.

213. Most, however, emphasised that care would be needed with the drafting. There was acknowledgement of the importance of the principle, but significant concerns about the precise definition. The IoD described ‘wider social impact’ as an “imprecise and politically-loaded concept”, while the International Corporate Governance Network said it introduced an “undesirable layer of subjectivity.”

The nature of creditors and the degree of loss they have suffered

214. Again there was interest in the principle, but with fewer respondents supporting the specific proposal that Schedule 1 should be amended to provide that failure to pay particular regard to the protection of deposits, pre-payments or otherwise vulnerable creditors once a company has become insolvent should be a matter to be taken into account by the court.

215. The CBI thought “the nature of creditors and degree of loss they have suffered seem reasonable factors to take into account” and Aviva thought there was merit in longer periods of disqualification on this basis.

216. There was, however, concern that providing a precise definition of ‘vulnerable creditors’ would be problematic and it was mentioned that Schedule 1 already provides for misconduct in relation to goods and services paid for in whole or in part to be taken into account.

The director’s previous failures

217. Views were mixed on whether the track record of the director (including the number of company failures he or she had been involved in) was a matter that should be taken into account when deciding whether or not to disqualify an individual and for how long.

218. Respondents tended to be in favour of past conduct being accounted for, but not by reference to specific numbers of failures; the GC100 said it was more appropriate to consider materiality and seriousness, the Law Society of Scotland said that "it is essential that any disqualification should be based on evidence of misconduct and not simply the number of failures" and Grant Thornton pointed out it should be "relevant conduct in relation to those other companies rather than the quantity of companies". Only one respondent, UK Individual Shareholders Society Ltd, supported, in principle, the proposition that there should be a certain number of failures beyond which the presumption should be that a director is unfit. It was further suggested by KMC Consulting, Debt and Insolvency Advisory Services, that directors must be allowed to make their case where previous failures did not result in an adverse conduct report.

219. The IoD explained the balance to be struck when considering this policy change, making clear their view that directors "should not be penalised due to the mere fact of being a director of previously-failed companies," and that such an approach risked being "anti-enterprise," while others had more specific concerns about those who particularly involve themselves with early stage companies, or companies in difficulties with a view to turning them around.

Government Response

220. We take from the responses to the discussion paper that the current Schedule 1 to the CDDA is outdated. It does not reflect the breadth of misconduct that could give rise to disqualification proceedings. *In extremis* this could result in matters not being considered when they should be. It also means there is a lack of transparency and a difference between what the law says and what the courts might consider in practice, and it risks a perception that not all relevant public interest factors are taken into account when considering whether a director should be disqualified for misconduct.

221. The Government is also receptive to the views of those who considered that addressing this issue simply by adding to the list was not appropriate – this might feed any unhelpful belief that if a matter is not explicitly listed, it will not be taken into account by the court or the Secretary of State. It seems that it is the list itself that is the problem.

222. Our intention is therefore to amend the statutory framing of the matters determining unfitness. We will make new provision for the matters to be taken into account, including the materiality of the conduct, culpability of the individual and the impact of the individual's behaviour. We will recast a more **generic set** of factors that the court **must** take into account. As set out in section 4, the new set will also support the system for disqualifying directors acting as a front for another, and shadow directors.

223. The new set of factors will cover misfeasance, breaches of duty, legislation or sector regulation by an individual as a director, applying both domestically or overseas. The court (or the Insolvency Service on behalf of the Secretary of State) would also have to take account of the extent of the director's responsibility for material breaches of domestic or overseas legislation or sectoral regulation by the company. The impact of the behaviour on those who have suffered from the director's misconduct, encompassing both a sense of the wider social impact and their effect on vulnerable creditors, will also be taken into account.

224. However, since Schedule 1 currently only applies where a court must find unfitness, i.e. in disqualifications under sections 6 or 8, we are also intending to require the court to take into account any evidence concerning the factors in Schedule 1 in determining whether to make a disqualification order under any ground.

225. The court (or the Insolvency Service on behalf of the Secretary of State) will also need to take into account any previous positions as director of a company that has become insolvent and any relevant aspect of the director's track record in running these companies, including previous disqualifications. We are sympathetic to concerns we heard about the possible unwanted effect the inclusion of 'track record' could have on those involved with early stage companies, or in rescuing companies that are in difficulties. We are clear that a director will, of course, be able to present any argument he or she might have (for instance as a business rescue professional or that the insolvency was not due to any element of unfit conduct on the director's behalf).

Summary way forward

- **When Parliamentary time allows we will replace Schedule 1 of the CDDA (setting out the matters determining unfitness) with a new, broader and more generic, provision setting out the factors which will be considered and providing for consideration of the materiality of a director's conduct, culpability and track record, and the impact of their behaviour - all of which the court or the Insolvency Service (on behalf of the Secretary of State) will have to take into account in determining whether an individual should be disqualified and, if so, for how long.**

6. Directors' accountability for misconduct overseas

This section covers the way forward in relation to the content of questions 69 to 72 in the Transparency and Trust discussion paper.

226. The UK regime for protecting business and the public from miscreant directors aims to cover all those whose conduct means they are unfit to manage a company. In today's globalised economy and labour market, we are conscious that the current legal framework risks omitting from its scope some directors who would be unfit to run a UK company: a person who has been criminally convicted or disqualified overseas (or has, subject to different regimes, had their freedom to manage a company in some way restricted) is not currently prevented in law from acting as a director of a UK company.

227. Our legal framework does include, under section 2 of the CDDA, provision for disqualifying a director under the civil regime following a UK criminal conviction. It also contains the power, under Part 40 of the Companies Act 2006, for regulations to be made to prevent a person who is subject to foreign restrictions from being a director of a company in the UK.

228. To build international and domestic confidence in the UK business environment, we asked a range of questions in the discussion paper about how we could update the legal framework to reduce the risk posed by directors convicted or restricted overseas.

Views Received

229. An overwhelming majority of respondents were of the view that persons subject to overseas restrictions or convicted of criminal offences in connection with the management of a company overseas should not be free to act as directors in the UK.

230. Three quarters of those who responded to the relevant question agreed that the Secretary of State should be able to bring disqualification proceedings against a director convicted of a criminal offence overseas, as he can for those convicted of a criminal offence in the UK. This support came from a range of interested parties, including the IoD, The Association of Business Recovery Professionals (R3) and most of the representative bodies for accountants and lawyers, although the Insolvency Lawyers Association raised a concern about the workability of the proposal "not least in terms of becoming aware of any such proceedings."

231. Nearly nine in ten supported the exercising of current Companies Act 2006 powers to make regulations to prevent a person who is subject to foreign restrictions from being a director of a company in UK. However, several qualified their support, again considering workability and the specific *caveat* that such persons should not be disqualified automatically. Answers to the specific question about automaticity confirmed this view, and the majority favoured a process with an application to court as an important step. As the Institute of Chartered Accountants in Scotland, put it, "In principle we would support regulations being made using the powers in Part 40 of the Companies Act 2006. We do not believe that where foreign restrictions apply that they should apply automatically in the UK and consider that this should remain a matter for the courts to decide."

232. Some respondents particularly felt that an automatic ban would be inappropriate in view of differences that exist between regimes. This was an important view – several respondents explained that it is not automatically the case that conduct in another jurisdiction would necessarily result in a finding of unfitness in the UK. The Bar Council stated "the criteria for disqualification in foreign countries may be on grounds very different to those in the UK so that it would be sensible to have an "approved list" of countries whose disqualification orders are recognised in the UK".

Government Response

233. We intend to act to maintain the integrity of our regime for protecting business and the public from miscreant directors by ensuring it covers individuals who have been convicted of relevant criminal offences overseas, or who have had restrictions imposed upon their role with respect to a company overseas. We will adopt a different approach to each of these situations. We will also, as set out in section 6, legislate to ensure courts take into account overseas conduct, as a matter of course, when considering the fitness of a director.

234. We intend to enable the Secretary of State (in practice, the Insolvency Service acting on his behalf) to bring disqualification proceedings in the UK whenever an individual has been convicted of a serious criminal offence in connection with the promotion, formation or management of a company overseas. Action could be taken not only following misconduct in the UK, as is normally the case, but also before the individual started to act as a director in the UK, and gives the option of preventative action as appropriate to be taken against persons who may pose a risk in the future. This will mean overseas criminal convictions are brought into line with the treatment of UK criminal convictions leading to disqualification.

235. We understand the concerns raised about the important role of the court given the potentially significant divergence of UK and worldwide systems. We intend to require disqualification cases concerning overseas criminal convictions to be brought before a UK court so they can form a judgment on the fitness of the individual, having regard to the nature and circumstances of the conviction.

236. We have considered the wider concerns about the interaction between UK and worldwide systems, particularly with respect to the merits of making regulations under existing powers in the Companies Act to apply overseas restrictions. The UK system can more rapidly assimilate misconduct committed overseas into its framework than it can develop a full system of equivalence of penalties and responses under civil regimes or other restrictions imposed internationally on those involved with companies. We have therefore commissioned a detailed piece of independent analysis of systems (initially in a limited number of jurisdictions) for sanctioning directors to inform consideration of whether and how best to make regulations under existing powers in the Companies Act 2006. **We would be happy to continue to discuss this issue with partners as we develop our thinking.**

Summary way forward

- **When Parliamentary time allows we will amend the law to:**

- **require courts to take any overseas misconduct into account when deciding whether or not to disqualify a director in the UK, as set out in section 6; and**
- **provide the Secretary of State with the power to disqualify an individual from acting as a director in the UK when convicted of a criminal offence in connection with the promotion, formation or management of a company overseas.**

- **We have also commissioned research into director disqualification and sanction regimes in certain other jurisdictions to inform the decision as to whether to make regulations under Part 40 of the Companies Act, to prevent directors restricted overseas from acting as directors in the UK.**

7. Increasing the reach of the director disqualification regime

This section covers the way forward in relation to the content of questions 40 to 42 in the Transparency and Trust discussion paper.

237. Individual accountability, particularly at senior levels, is an important part of corporate governance. Though confidence in the Insolvency Service's investigation and enforcement regime for company directors remains good[36], there is always a sense that more could be done to ensure accountability for directors' misconduct, particularly in key sectors or following major corporate failures. Individual accountability has been a central focus of the Parliamentary Commission on Banking Standards (PCBS).

238. Tackling unacceptable conduct by company directors often depends on effective interaction between different enforcement agencies. Some sectoral regulators can ban individuals from working in their sector, for instance the Financial Conduct Authority (FCA). Proceedings to disqualify miscreant directors from the UK economy can only be brought by the Insolvency Service[37], acting on behalf of the Secretary of State. In practice, a sectoral regulator might, after their own processes, make a referral to the Insolvency Service, which could pursue disqualification economy-wide under section 8 of the CDDA on the basis of 'investigative material.'

239. There are risks in this process. The protection afforded by an economy-wide disqualification can be delayed pending, and dependent on, sectoral investigation. Moreover, if the sectoral regulator's material does not meet the current legal definition of 'investigative material' then disqualification might require new (perhaps duplicate) enquiries. (Similarly, legislative restrictions also prevent the Insolvency Service from sharing investigative information for instance with Her Majesty's Revenue and Customs (HMRC).)

240. The discussion paper invited views on the integration of sectoral regulation and the director disqualification regime. This included whether, in certain circumstances, key sectoral regulators should be given additional powers to disqualify directors.

Views Received

241. In section 5 of this document we set out our intention to amend the statutory framing of the matters determining unfitness which the court must consider in disqualifying a director. There was support for explicitly including material breaches of sectoral regulation in this process.

242. This support was indicative of the general view that more should be done to integrate sectoral regulatory regimes and the director disqualification regime. But views on one concrete proposal to achieve that were divided.

243. More than half the respondents thought that directors barred from senior positions in key sectors should be considered for disqualification from acting as directors of any

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[36] 'Stakeholder Confidence Survey', Insolvency Service, 2012: http://www.bis.gov.uk/insolvency/About-us/our-performance-statistics/StakeholderConfidence
[37] other than those relating to breaches of competition law

Companies Act 2006 company. But we also heard a lot of concerns about sectoral regulators having additional powers to disqualify directors.

244. Many respondents agreed with the principle of misconduct anywhere requiring appropriate accountability. Professor Andrew Johnston explained that “a ban imposed by a sectoral regulator should extend to the management of all companies if the regulatory infringements show that the individual is not suitable to manage companies of any type.” The Investment Management Association argued “that directors who breach the responsibilities of a regulated sector may also have breached the general directors’ duties established in the Companies Act 2006 which questions whether they should continue to be allowed to act as such a director. We thus agree they should be considered for disqualification.”

245. Of those who were positive about sectoral regulators having disqualification powers, about half thought that in such cases disqualification should be by application to the court. They were concerned about more automatic or discretionary powers for regulators. This is noteworthy because the Insolvency Service has the power to accept undertakings which do not go to court – and in fact about 80% of disqualification cases are resolved in this way. Deloitte said “the extreme step change from breach of sector regulatory action to overall disqualification requires due process to be followed through the court”.

246. Those who were not supportive of regulators having powers to disqualify directors voiced concerns about the narrow focus and inexperience of sectoral regulators in this space. GlaxoSmithKline questioned the “necessary competence to make …wide-ranging disqualification orders.” The International Corporate Governance Network had “reservations about giving [sectoral regulators] powers beyond their sectors.”

247. Some also thought a proposed change might be ineffective. The Insolvency Lawyers Association did not “see any advantages in extending the power to bring disqualification proceedings to regulators.” The British Bankers Association (BBA) explained that “a material breach of relevant sectoral regulation may be a relevant factor for the court to take into account but no more.”

248. We also heard a number of suggestions which could improve the integration of the sectoral regulatory regimes and the director disqualification regime. For instance, the Institute of Chartered Accountants in Scotland suggested that regulators should be required to report cases involving director misconduct to the Insolvency Service. The CBI, meanwhile, pointed to the value of sharing information and expertise between the Insolvency Service and sectoral regulators.

249. We also asked in the discussion paper whether there was merit in changing the general statutory duties of directors set out in the Companies Act 2006 with respect to one key sector, namely banking. This would introduce a new primary duty on banking directors to promote the financial stability of their companies over the interests of shareholders. This followed the Government’s acceptance of the PCBS recommendation that we consult on this issue. Consultation has now shown a strong consensus amongst most respondents that the statutory duties of directors should not be changed specifically for bank directors. The CBI, IoD, the British Bankers Association, ShareSoc and the Law Society, to name but a few, felt it would not be effective or appropriate as part of wider reforms to the regulation of the financial sector.

250. Many commented that the Companies Act 2006 duties of all directors are already highly applicable to banking directors. This is because they are explicit about the need to have regard to the 'long term' and the need to take into account stakeholders other than shareholders. Many argued that company law should remain a universal framework and any additional responsibilities to be placed on individuals in the banking sector were best dealt with by sector-specific mechanisms. The IoD for instance were "not convinced that the sectoral duties of bank directors should be defined through changes to the Companies Act." Similarly, there was a feeling, expressed among others by the CBI, that "the issue [of individual accountability in the banking sector] is being dealt with through other channels," for example through replacing the Approved Persons regime with a new Senior Manager's regime for bank directors and other key staff.

Government Response

251. Given considerable support for the objectives behind the proposal, we will act to improve the integration of the sectoral regulatory regimes and the director disqualification regime.

252. As set out in section 5 we intend to legislate as soon as Parliamentary time allows to include breaches of sectoral regulation within the statutory framing of the matters determining unfitness which the courts must consider in disqualifying a director. This would apply equally to the Insolvency Service when accepting an undertaking. This clarity will ensure the full picture of directors' misconduct will be considered in all cases and lead to economy-wide bans where appropriate. Discretion will still apply to the nature of the breach, whether it is technical or concerns, for instance, dishonesty.

253. We also intend to legislate to remove barriers to information sharing between sectoral regulators and the Insolvency Service. As soon as Parliamentary time allows we will amend the CDDA to allow the Insolvency Service to make greater use of information provided by other regulators (and indeed other sources). Similarly, we intend to widen the information sharing gateways in a schedule to the Companies Act 1985 that enable the Insolvency Service to share information gathered as part of their own company investigations. This will improve the efficiency of investigations and expedite public protection where required.

254. The Government recognises that these two changes to legislation are necessary but not sufficient to deliver a better functioning system. We are committed to further improving co-operation between sectoral regulators, particularly in key sectors, and the Insolvency Service.

255. In practice, we will take clear steps to ensure that expertise is shared between the Insolvency Service and sectoral regulators. This will ensure understanding of circumstances when disqualification of a director might be appropriate and what might be required as part of that process. We will consider secondments between the Insolvency Service and regulators where appropriate, to ensure appropriate access to skills.

256. Operationally, key sectoral regulators, including the FCA and Prudential Regulation Authority (PRA) will work with the Insolvency Service to ensure all the relevant parties are engaged early on key cases. As part of a process to improve collaboration and

the more effective use of information we will explore the use of joint investigations in appropriate cases. This will involve early engagement through intelligence systems to ensure there is joint planning and participation from the outset. We will also consider where use of Companies Act powers in sectoral investigations could increase their reach.

257. In light of the concerns we heard, and the alternative solutions set out here, we do not currently intend to give sectoral regulators the powers to disqualify directors through their own processes. These powers will remain with the Insolvency Service, acting on behalf of the Secretary of State. We consider that the improvements set out above will allow the sectoral regulatory regimes and director disqualification system to function better together, as part of an integrated whole.

258. We have considered carefully the PCBS' concerns that a director's duty to promote the success of the company under the Companies Act 2006 could conflict with the financial stability of banks. The directors' duties already explicitly require directors to have regard to a range of matters in the long term, and as the PRA have set out in their response to the PCBS[38], would not override any obligations to comply with sector-specific requirements. We have separately agreed to a number of the PCBS' recommendations focussed on the accountability of bank directors, including introducing a new Senior Managers regime for bank directors and other key staff, and we will pursue the measures in this section (and in section 5) to increase the effective interactions between the enforcement of sector regulation and company law. In this context and based on the views we heard, the Government believes that directors' general statutory duties should continue to apply economy-wide and remain unchanged.

Summary way forward

- **We will require the courts to consider breaches of sectoral regulation in disqualifying a company director (as in section 5).**

- **We will remove the legislative barriers to the types of investigative material that can be provided by sectoral regulators or others for use by the Insolvency Service to pursue the disqualification of a director.**

- **We will enhance the ability for the Insolvency Service to share investigative information with other regulatory or enforcement bodies.**

- **We commit to effective working between sectoral regulators, including those in key sectors such as the FCA and PRA, and the Insolvency Service. We will build on current best practice to develop a programme of ongoing collaboration and co-operation to ensure sector specific regulatory enforcement and economy-wide company law enforcement are fully integrated.**

- **We will not amend the directors' general statutory duties to introduce a primary duty for bank directors to promote financial stability over the interests of their shareholders.**

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[38] *Bank of England response to the Final Report of the Parliamentary Commission on Banking Standards* (October 2013) http://www.bankofengland.co.uk/publications/Documents/news/2013/pcbsresponse.pdf

8. Better compensating creditors for director misconduct

This section covers the way forward in relation to the content of questions 50 to 60 in the Transparency and Trust discussion paper

259. As set out above, the main purpose of the disqualification regime is to protect the market and consumers from acts of directors whose conduct falls below expected standards. Currently, those who have suffered loss as a result of misconduct do not generally benefit, and might feel disqualification is not a sufficient deterrent or form of redress.

260. We are conscious that under the current disqualification regime, the measures that allow action against miscreant directors to secure financial redress for creditors are not heavily used. There are a number of actions that liquidators and/or administrators can take under the Insolvency Act 1986 to this end, including actions for wrongful and fraudulent trading, preferences and transactions at an undervalue. Since 1986 there have only been around 30 reported wrongful trading cases, about 50 preference claims and about 80 reported cases arising from undervalue transactions.

261. Moreover, the measures that exist are restricted in their application; only the liquidator of a company can bring an action for fraudulent trading and wrongful trading under sections 213 and 214 of the Insolvency Act 1986 respectively. If they do not or cannot, for whatever reason, the cause of action cannot be assigned for another party to pursue. Creditors are therefore unable to benefit from a remedy intended to provide compensation against directors who, through their fraudulent or negligent actions, have caused their company to enter insolvent liquidation.

262. Whilst these remedies are a useful 'lever' to include in the informal negotiations insolvency practitioners enter into with directors, we sought views in the discussion paper on the potential to improve confidence in the enforcement regime by strengthening redress mechanisms for creditors. We set out two proposals aimed at increasing the likelihood of culpable directors being pursued with a view to compensating creditors for their losses:

a. Allowing liquidators to assign fraudulent and wrongful trading actions.
We proposed that it should be possible to sell or assign these actions to any third party to pursue (as an alternative to the liquidator investigating and bringing the claim). We invited views on whether this would be an effective means of increasing actions taken, and whether the move would require safeguards to prevent certain parties (including the directors under scrutiny) acquiring such claims.

b. Allowing courts to make compensation orders against directors they have disqualified.
We asked whether giving the court a power to make a compensatory award against a director at the time it makes a disqualification order would improve confidence in the insolvency regime. We similarly asked if the Insolvency Service (acting on behalf of the Secretary of State) should to be able to request and agree a compensation award where it has accepted a disqualification undertaking from a director.

Views Received

Liquidators assigning fraudulent or wrongful trading actions

263. Most respondents agreed that very few fraudulent trading and wrongful trading actions are currently taken by liquidators, explaining the issues in terms of a high evidential threshold, concerns directors would not have the ability to pay, or liquidators or creditors not having sufficient assets to fund the claims.

264. Views were more mixed on the proposal to make it possible to sell or assign actions to third parties. Some supported it. Others felt that it was unlikely to result in significant benefits for creditors because of the inherent costs and risks in bringing claims. Some felt that the measure would increase the deterrent effect and discourage directors' misconduct in the first place.

265. Some raised practical concerns. Respondents with insolvency expertise, including R3 and the Chancery Bar Association, pointed out that a third party might struggle to bring a claim without access to the liquidator's detailed investigation powers. Some legal experts were concerned about the potential for opportunistic claims if actions were sold without restriction, putting undue pressure on directors ill-equipped to defend themselves.

266. Other respondents thought there was potential to expand the proposition, pointing out that, beyond fraudulent trading and wrongful trading actions, there are other causes of action currently restricted to liquidators or administrators only. These include those applications which may be made to court under Part VI of the Insolvency Act 1986 in respect of a transaction at an undervalue, preferences and extortionate credit transactions.

Compensation awards against directors who have been disqualified

267. Around two thirds of respondents broadly supported the proposal to give courts the power to make compensatory awards against directors it has disqualified. Most respondents agreed it would help make directors more accountable for their actions.

268. Some respondents considered carefully the principle of the proposal, noting the primary focus of the disqualification regime on protection, and suggesting compensation was separate and best handled by the private sector. The IoD set out as a point of principle that "the climate of litigation observed in the US is not something we would advocate in the UK."

269. The more detailed substance of the responses revealed differing views spread widely and evenly across business groups, insolvency practitioners, legal and fraud bodies. Some wanted to understand more about how the proposal could work in practice, alongside existing civil recovery mechanisms and disqualification actions brought by the Insolvency Service (acting on behalf of the Secretary of State). The grounds which could give rise to a compensatory award were likely to be similar those which a liquidator would rely on in support of a misfeasance action under s212 of the Insolvency Act 1986, hence it was felt by the Insolvency Lawyers Association and R3 that communication between the Insolvency Service and liquidators would be paramount. The majority of responses suggested it should indeed be creditors who

generally benefit from a compensatory award, but with the court having some discretion (for instance with regard to the Secretary of State's costs in bringing a case).

Government Response

Liquidators assigning fraudulent trading or wrongful trading actions

270. We remain of the view, widely held by respondents, that the causes of action which currently exist to protect creditors and secure financial redress are not well used. We intend to act to remove a barrier to their use, by making it possible for actions to be assigned to a creditor or other third party, so they are more likely to be pursued. Responding to the views we have heard, we intend to broaden the proposal in the discussion paper, and include not just fraudulent trading and wrongful trading actions but also actions that can only be brought by a liquidator or administrator under sections 238 (transactions at an undervalue), 239 (preferences) and 244 (extortionate credit transactions) of the Insolvency Act 1986.

271. Following the Government's recent response to last year's Insolvency Red Tape Challenge consultation we will also broaden the proposals to allow administrators the same right as liquidators to bring fraudulent trading and wrongful trading actions on an insolvent administration and also give them the right to assign such actions. Currently, an administrator wishing to pursue this type of claim would first have to put the company into insolvent liquidation, which represents an unnecessary cost.

272. We understand the concerns we heard about the risk of unwarranted claims being brought against directors. However, we expect insolvency professionals to have regard to existing professional and ethical standards in judging when to assign causes of action and there are remedies within insolvency legislation that parties may be able to use to deal with instances of abuse.

Summary way forward

- **When Parliamentary time allows we will allow causes of action that arise on an insolvency and which may only be pursued by an insolvency office-holder to be sold or assigned to another party to pursue, to increase the chances of action being taken against miscreant directors for the benefit of creditors.**

Compensation awards against directors who have been disqualified

273. The Government wants to see directors who have fallen short of acceptable standards held financially accountable to creditors where their actions have caused loss. Building on the general support for this principle, we will give the Secretary of State the power to apply to court for a compensatory order to be made against a director who has been disqualified, where that director's actions have caused identifiable loss either to specific creditors or to creditors generally.

274. We also propose to allow the Secretary of State to accept a compensation undertaking from a director against whom disqualification proceedings have been brought, or are proposed to be brought, where the director opts to offer an acceptable compensation settlement as an alternative to going to court. When implementing this

change, we will consider carefully the appropriate safeguards to ensure the Insolvency Service (acting on behalf of the Secretary of State) acts reasonably in exercising this function. The court and the Insolvency Service would have discretion to make the compensation award to a particular creditor, or group or class of creditors, or the creditors as a whole. Any such award would have to take into account any compensation payment the director has already made within the insolvency proceedings.

275. Section 5 sets out how courts will be required to take the losses of creditors into account when considering a disqualification application. The same considerations will apply to the Insolvency Service (when acting on behalf of the Secretary of State) in considering whether to accept a disqualification undertaking offered by a director.

Summary way forward

- **When Parliamentary time allows we will give the Secretary of State the power to apply to the court for a compensation order against a director who has been disqualified (and to empower the Insolvency Service to accept a compensation undertaking offered by such a director) where creditors have suffered identifiable losses from their misconduct.**

9. Increasing the time period for disqualification proceedings following an insolvency

This section covers the way forward in relation to the content of questions 61 to 63 in the Transparency and Trust discussion paper.

276. Following the insolvency of a company, any necessary proceedings to disqualify a director are most commonly brought under section 6 of the CDDA. These actions must be commenced within two years of the date of the first insolvency event (unless the court orders otherwise), which is normally achieved.

277. There are, however, some circumstances where information does not come to light until later, or where a case is exceptionally large or complex, where the limitation period jeopardises the accountability of directors. In such cases, the limitation period might mean that misconduct is not addressed. One further and unintended consequence of the current time limit is that the Insolvency Service (acting on behalf of the Secretary of State) is obliged to issue proceedings 'protectively' within the two year window, and might overall issue more proceedings than are necessary (even if negotiation of an undertaking with a director is ongoing and would otherwise have continued to the right outcome).

278. In the discussion paper, we invited views on extending the period within which disqualification proceedings under section 6 of the CDDA must be instituted. We also asked what time period would be appropriate.

Views Received

279. Fewer than 30 respondents expressed a view on whether the time limit should be increased and views were mixed. A little over half agreed that an increase to 5 years would be appropriate, yet nearly as many felt the limit should either remain at the current level or increase to only 3 years.

280. Several of those who agreed with an increase to 5 years, or more, saw the importance of ensuring there is sufficient time to address whatever improper conduct may exist. Those opposed, or favouring a smaller increase, saw little need to increase the limit, with the IoD being amongst those who felt the threat of disqualification proceedings should not hang over directors for too long "…affecting their ability to engage in productive economic activity". R3 warned against "practical difficulties and potential human rights issues". Others were concerned about needing to commit investigative resource over a longer period, and to ensure there is no relaxation in the general pace of issuing proceedings.

281. Respondents on both sides of the debate think the role of the court should continue to be key and mentioned the importance of the Secretary of State being able to apply for an extension of time in appropriate cases.

Government Response

282. We have carefully considered the views we heard, bearing in mind the important balance of pursuing the right cases no matter how difficult or complex, and pursuing

the majority of cases quickly, efficiently, and cost effectively. We have also considered carefully the points made about the effects of a protracted process on directors, while ensuring the public are protected from miscreant directors.

283. Having weighed up the differing views, we propose to increase the time limit to three years. We will also continue to make use of the provision to apply for leave to bring proceedings out of time in complex or difficult cases.

Summary way forward

- **When Parliamentary time allows we will increase the time limit for instituting disqualification proceedings under section 6 of the CDDA from 2 to 3 years of the earliest insolvency event.**

Annex A: Linking the discussion paper to your views and our response

Discussion Paper Question	Government Response Reference	Question Topic
1	29-35	Defining beneficial ownership
2	44-52	Scope of companies (LLPs)
3	53-58	Exemptions
4	59-73	Beneficial ownership - part 22 of the Companies Act 2006
5	59-73	Beneficial ownership of blocks (25%+)
6	59-73	Beneficial ownership - disclosure requirements
7	59-73	Beneficial ownership - additional requirements
8	36-43	Express trustees
9	36-43	Beneficiaries of trusts
10	128-138	Companies Act 1985 investigative powers
11	74-89	Information to be obtained - requirements
12	74-89	Information to be obtained - requirements
13	74-89	Information to be obtained - requirements
14	74-89	Information to be obtained - requirements
15	90-101	Updating the information
16	90-101	Updating the information - Beneficial owners proactively updating
17	90-101	Updating the information - timeframes for updating
18	90-101	Updating the information - annual returns
19	102-119	Information being made publicly available
20	102-119	Information being made publicly available
21	120-127	Exemptions from public disclosure
22		
23	102-119	Information being made publicly available
24	120-127	Exemptions from public disclosure
25		

Discussion Paper Question	Government Response Reference	Question Topic
26		
27	139-157	Bearer shares - prohibiting the new issue of bearer shares
28	139-157	Bearer shares - timeframes
29	139-157	Bearer shares - additional measures
30	139-157	Bearer shares - costs and benefits
31	175-202	Nominee directors - statutory duties and disclosure of status
32	175-202	Nominee directors - divesting power
33	175-202	Nominee directors - additional measures
34	158-174	Corporate directors - policy
35	158-174	Corporate directors - prohibiting corporate directors
36	158-174	Corporate directors - timeframes for prohibiting corporate directors
37	158-174	Corporate directors - additional measures
38	158-174	Corporate directors - costs and benefits
39		
40	237-258	Allowing sectoral regulators to disqualify
41	237-258	Allowing sectoral regulators to disqualify
42	237-258	Allowing sectoral regulators to disqualify
43	203-225	Factors to be taken into account - breaches of sectoral regulation
44	203-225	Factors to be taken into account - wider social impacts
45	203-225	Factors to be taken into account - definition of wider social impacts
46	203-225	Factors to be taken into account - High volume deposits and vulnerable creditors
47	203-225	Factors to be taken into account - high volume deposits and vulnerable creditors
48	203-225	The director’s previous failures
49	203-225	The director’s previous failures
50	259-275	Better compensating creditors for director misconduct
51	259-275	Better compensating creditors for director misconduct
52	259-275	Better compensating creditors for director misconduct
53	259-275	Better compensating creditors for director misconduct

Discussion Paper Question	Government Response Reference	Question Topic
54	259-275	Better compensating creditors for director misconduct
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57	259-275	Better compensating creditors for director misconduct
58	259-275	Better compensating creditors for director misconduct
59	259-275	Better compensating creditors for director misconduct
60	259-275	Better compensating creditors for director misconduct
61	276-283	Increasing the time period within which disqualification proceedings must be brought following an insolvency
62	276-283	Increasing the time period within which disqualification proceedings must be brought following an insolvency
63	276-283	Increasing the time period within which disqualification proceedings must be brought following an insolvency
64	175-202	Educating directors
65	175-202	Educating directors
66	175-202	Educating directors
67	175-202	Educating directors
68	175-202	Educating directors
69	226-236	Directors accountability for misconduct overseas
70	226-236	Directors accountability for misconduct overseas
71	226-236	Directors accountability for misconduct overseas
72	226-236	Directors accountability for misconduct overseas

How to get in touch

We are happy to continue to hear views on the policy direction set out in this paper as we move towards its implementation in legislation. Please do contact **transparencyandtrust@bis.gsi.gov.uk** clearly marking the subject of your email.

In exceptional circumstances we will accept correspondence in hard copy. If you need to submit a hard copy, please provide two copies to the Corporate Governance team, Business Environment directorate at the following address:

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